

Migration, Integration, Asylum: Political Developments in Germany 2017

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Federal Office
for Migration
and Refugees



Migration, Integration, Asylum

Political Developments in Germany 2017

Annual Policy Report by the German National Contact Point
for the European Migration Network (EMN)



Co-financed by the
European Union



Migration, Integration, Asylum

Political Developments in Germany 2017

Annual Policy Report by the German National Contact Point
for the European Migration Network (EMN)

Federal Office for Migration and Refugees 2018

Summary

The 2017 Policy Report of the German National Contact Point for the European Migration Network (EMN) provides an overview of the most important political, legislative and institutional developments in the areas of migration, integration and asylum in the Federal Republic of Germany in the year 2017. It describes changes to the general political structure, for example due to elections, the establishment of new institutions or institutional developments. In addition, it deals with issues of legal migration, international protection and asylum, unaccompanied minors and other vulnerable persons, integration and anti-discrimination measures, irregular migration, return, human trafficking and migration and development.

2017 saw several changes to the *general structure of the political system* in the area of migration, integration and asylum. In March 2017, the Repatriation Support Centre (ZUR) was established. It is managed by the Federal Ministry of the Interior and coordinates the operative efforts of the Federal and Land authorities in the areas of both voluntary and forced returns. In addition, the position of a 'Commissioner for Refugee Management' (BFM) was created for one year. In 2017, the Federal Ministry of the Interior appointed Frank-Jürgen Weise, the former interim head of the Federal Office for Migration and Refugees. Efforts to connect more authorities to the core data system based on the Central Register of Foreigners (AZR), which was created in 2016, continued in 2017. This allows for a new type of exchange of personal data across administrative levels and authorities. Structural and legal changes as well as changes in the public discussion were also triggered by four Land elections (North Rhine-Westphalia, Lower Saxony, Saarland and Schleswig-Holstein) and in particular the Bundestag elections on 24 September 2017. Migration and asylum policy controversies played a major role during the election campaign and the coalition negotiations and were an important issue in the media as well. The discussions focused on family reunification for beneficiaries of subsidiary protection (further restriction vs a more liberal stance), a potential cap on the number of asylum seekers, the extension of return measures, the classification of the Maghreb countries as safe countries of origin and the age assessment of unaccompanied minors (please see the box at the end

of this summary for more information on the legal changes).

Economic and other legal migration took place against the background of an overall favourable labour market development in Germany. In fact, the number of regular jobs, which are subject to social security contributions, rose and unemployment dropped to its lowest level since the German reunification. At the same time, more people than before touched unemployment benefits II because the number of beneficiaries of protection who were entitled to social security benefits increased in 2017. The number of 'EU Blue Cards', which, in a European comparison, was already high in the preceding years, rose to 21,727 in 2017, and migration under the provisions for the western Balkan countries increased as well, with 25,341 visa for work purposes being granted during the same year. Moreover, visa requirements for Georgian and Ukrainian nationals were loosened in 2017. At the same time, a revision of the 'visa suspension mechanism' entered into force. Under certain circumstances, a visa requirement may be reinstated for third countries, for example if irregular migration and/or the number of asylum applications from a given country increases significantly. The number of visa granted for family reunification purposes rose for the seventh year in a row, to 117,991. At the same time the restrictions concerning family reunification with beneficiaries of subsidiary protection remained in place. The number of foreign students at German universities rose above 350,000 for the first time in 2017, which means that the goal given out by the Federal government in 2013 for 2020 was reached early. Moreover, the EU REST Directive was implemented and introduced two new residence titles for international researchers with the aim of facilitating European mobility.

The number of *newly immigrating Jews and ethnic German repatriates* rose in comparison to the preceding year, but remained low in comparison to the 1990s and 2000s. In 2017, 817 Jews came to Germany under the procedure for Jewish immigrants from the successor states of the former Soviet Union, and 7,059 ethnic German repatriates entered the country. The number of naturalisations rose slightly in comparison to 2016, but remained low.

Refugee migration declined considerably in comparison to the two preceding years; a total of 222,683 first-time and subsequent asylum applications were filed in 2017. During the same time, 603,428 decisions on first-time and subsequent applications were taken, with the overall protection rate dropping to 43.4% (2016: 62.4%). Several legal changes entered into force in 2017. Now, asylum seekers whose application was rejected as manifestly unfounded may be ordered to remain in (initial) reception centres for up to 24 months. Moreover, the provisions concerning obligations to notify the Federal Office for Migration and Refugees about journeys of beneficiaries of protection to their countries of origin were changed. The 'Act Prohibiting Child Marriages' entered into force in July 2017 and allows marriage under the age of 18 only in cases of hardship. Persons aged under 16 are not allowed to marry in any case anymore. Administrative changes included an early revocation examination of 80,000 to 100,000 positive asylum decisions from the years 2015 and 2016 which was ordered by the Interior Ministry in May 2017 and the establishment of three Dublin centres at the Federal Office for Migration and Refugees. In addition, new methods were introduced to establish the identity of asylum applicants, such as voice biometrics, the analysis of mobile data carriers owned by asylum seekers or the automated name transliteration and analysis. At the European level, the Federal Office for Migration and Refugees doubled the number of employees seconded to the European Asylum Support Office (EASO) in Greece and Italy. Under the European relocation procedure, Germany accepted 9,166 asylum seekers from these two countries. In addition, 2,997 beneficiaries of protection came to Germany under the humanitarian admission procedure within the framework of the EU-Turkey agreement, and 385 others were accepted in the framework of the German resettlement contingent. Moreover, five Länder continued their private sponsorship programmes at the Land level.

Looking at *particularly vulnerable groups*, the number of asylum applications filed by unaccompanied minors slid to 9,084 (2016: 35,939). Moreover, an amendment to the legal provisions now obliges the youth welfare office to immediately file an asylum application on behalf of youths taken into care if the circumstances of the case justify the assumption that the child or youth is entitled to international protection. Several Länder have established new shelters for particularly vulnerable groups. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), UNICEF and other civil-society organisations have published minimum

standards for the protection of handicapped refugees and LSBTTIQ refugees in refugee accommodation centres in the framework of the joint 'Initiative for the Protection of Refugees in Refugee Accommodation Centres'.

In the field of *integration*, the number of integration course participants remains high. In 2017, 289,405 persons enrolled in an integration course, another 24,785 in a course under the ESF-BAMF programme and more than 95,000 in a vocational German language promotion course. Some Länder offered additional alphabetisation courses, and in Bavaria, the Bavarian Integration Act entered into force. The Federal Office for Migration and Refugees initiated a nationwide, new integration course for second-literacy learners who had already learned to read and write in a non-Latin system. This course draws upon participants' literacy skills in their first languages. In addition, childcare during integration courses was expanded by mid-2017. At the end of 2017, a new skills test called 'MYSKILLS' and developed jointly by the Federal Labour Office and the Bertelsmann foundation was implemented. In addition, the EU Commission has developed an 'EU Skills Profile Tool for Third Country Nationals', which aims to complement existing national instruments. Germany and France also established the German-French Integration Council (DFIR).

Turning to *anti-discrimination measures*, 2017 saw the adoption of the new 'National Action Plan against Racism', which calls for the protection of and solidarity with victims of racial discrimination, violence or other ideas of inequality. The goal is to develop and promote measures to reduce (institutional) racism, increase public awareness of equality and equal value and strengthen a diverse, democratic society. The Federal programme 'Live Democracy! Active against Right-wing Extremism, Violence and Hate' was extended in 2017 to cover also the prevention of hostility, rejection and hate against Islam and Muslims, the empowerment of victims, the prevention of racism and the empowerment of Black people, the promotion of initiatives to support diversity and anti-discrimination measures in companies and the prevention of discrimination against lesbians and gays. In addition, the 'Network Enforcement Act' (NetzDG) entered into force in October 2017. It aims to combat hate crime and criminal fake news on social media platforms.

In the field of *irregular migration*, human trafficking and border controls, the number of persons who were found to be illegally entering Germany

during border traffic controls by the Federal Police dropped by 61%, to 43,970 (2016: 111,843). The number of persons who are enforceably required to leave the territory, which includes persons whose removal is suspended, rose to 228,859 (2016: 207,484). For 166,068 of them, removal has been suspended (2016: 153,047). Border controls at the German-Austrian border, which were reintroduced in 2015, continued in 2017 and were complemented by controls of flights from Greece to Germany. At the European level, Germany deployed Federal Police officers on Frontex missions for a total of 41,600 days. In addition, Germany continued to participate in the European naval operation Sophia against migrant smugglers and increased its contribution to the EU Emergency Trust Fund for Africa to EUR 100 million. This fund is also used to finance measures to prevent illegal migration. In October 2017, the Federal Foreign Office started the online information campaign 'Rumours About Germany', which aims, among other things, to refute rumours spread by migrant smugglers. In May 2017, the Federal Social Court decided that the authorities may stop paying money for personal expenses to persons who are enforceably required to leave Germany and touch benefits under the Act on Benefits for Asylum Seekers if these persons do not cooperate in efforts to obtain a passport and thus prevent their removal.

An amendment to the Schengen Borders Code in March 2017 obliges the member states to conduct systematic controls of persons who are entitled to free movement under EU law once they leave the Schengen area and to compare their data with databases for lost or stolen identity documents as well as to make sure that they are no threat to public order and domestic security. In October, the European Parliament decided that an entry and exit system is to be implemented which will register the personal data, fingerprints and face scans of all third-country nationals who come to the EU for a short period of time.

In the field of *return policy*, 29,522 voluntary returns were supported by the REAG/GARP programme in 2017 (2016: 54,006), with 10,000 persons receiving additional support under the 'StarthilfePlus' programme, which was implemented in February 2017. 23,966 persons were removed (2016: 25,375), 1,707 removed following unauthorised entry (2016: 1,279) and 12,370 refused entry (2016: 20,851). In February 2017, the Federal Office for Migration and Refugees established a return hotline, and since June, all asylum applicants are provided with standardised return information at the branch offices of

the Federal Office for Migration and Refugees. The 'Act to Improve the Enforcement of the Obligation to Leave the Country' contains several changes in the areas of detention to secure removal, custody to secure departure, residence requirements for persons who are obliged to leave Germany and their electronic monitoring and the announcement of removals. In addition, the Repatriation Support Centre started work in March 2017 (see above).

Amendments to the law allow particularly vulnerable victims of *human trafficking* since January 2017 to benefit from free psychological and social support before, during and after proceedings in court. Since July, victims of human trafficking are no longer obliged to enforce damages against the perpetrators in court; it is sufficient if they raise and substantiate their claims. By entering into force of the Prostitute Protection Act in July 2017, prostitutes are obliged to have their business registered and to attend an information and consultation talk, which will provide them with information about their legal situation, healthcare insurance, healthcare and social consultation opportunities and several other issues. One goal of the new law is to fight crime in prostitution which includes human trafficking and exploitation of prostitutes.

The links between *migration and development policy* continued to strengthen in 2017. The German Society for International Cooperation (GIZ) alone implemented 100 projects in the field of flight and migration around the world in 2017. Since March 2017, the Federal Ministry for Economic Cooperation and Development (BMZ) has been developing its return programme 'Returning to New Opportunities', which is directed at persons who voluntarily return to their country of origin. The goal is to provide these returnees with information, advice and (financial) support to give them a new start in their country of origin. By the end of 2017, migration consultation centres had been established in seven third countries to support the reintegration of returnees and to inform people about local employment opportunities and legal migration to Germany. Moreover, the Federal Ministry for Economic Cooperation and Development gave EUR 230 million to the 'Employment Offensive for the Middle East' in 2017, which provides refugees in Syria's neighbouring countries with employment and income. In June 2017, EU top politicians signed a 'New European Consensus on Development', which proposes to align the EU's development policy with the Agenda for Sustainable Development and the Paris Climate Agreement. In September, the European

Fund for Sustainable Development (EFSD) was adopted as the first pillar of the European external investment plan (EIP) package for third countries. The fund has a volume of EUR 3.35 billion. The

EIP will contribute to the implementation of the EU migration agenda, including the fight against the root causes of migration and the reintegration of returnees.

Overview of changes to migration, integration and asylum laws in 2017

- provisions concerning psychological and social support during legal proceedings pursuant to the 'Act Strengthening the Victims of Crime in Criminal Proceedings' (entry into force on 1 January 2017, with large parts already in force since 31 December 2015; see Chapter 9.2)
- obligatory participation in integration courses for asylum applicants with a good prospect to remain under the Integration Act (entry into force of the specific provisions on 1 January 2017, with large parts of the Act already in force since 6 August 2016; see Chapter 6.1.1)
- the 'Act on the Processing of Passenger Name Record (PNR) Data to Implement Directive (EU) 2016/681' (Passenger Name Record Act) (entry into force on 10 June 2017; see Chapter 7.2)
- the 'Act to Regulate the Prostitution Business and Protect Prostitutes' (Prostitute Protection Act, Prost-SchG) (entry into force on 1 July 2017; see Chapter 9.2)
- the 'Act on the Reform of Criminal Asset Recovery' (entry into force on 1 July 2017; see Chapter 9.2)
- the 'Act Prohibiting Child Marriages' (entry into force on 22 July 2017; see Chapters 4.1.2 and 5.1.2)
- the 'Act Amending the Federal Act on Compensation for Victims of Violent Crime and other Provisions' (entry into force on 25 July 2017; see Chapter 4.1.2.3)
- the 'Act to Improve the Enforcement of the Obligation to Leave the Country' (entry into force on 29 July 2017; see Chapters 4.1.2, 5.1.2, 8.1.2 and 8.2.2)
- the 'Act to Implement the EU Residence Directives on Labour Migration' (entry into force on 1 August 2017; see Chapter 3), which implements several EU Directives, such as the Directive on Intra-Corporate Transfers (Directive 2014/66/EU), the REST Directive (Directive 2016/801/EU) and the EU Seasonal Workers Directive (Directive 2014/36/EU),
- the 'Act to Improve Enforcement of the Law in Social Networks' (Network Enforcement Act, NetzDG) (entry into force on 1 October 2017; see Chapter 6.2.2)

The European Migration Network

The European Migration Network (EMN) was launched by the European Commission in 2003 on behalf of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum at the European level. Since 2008, Council Decision 2008/381/EC forms the legal basis of the EMN and National Contact Points have been established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union institutions, Member States' authorities and institutions as well as the wider public by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in these areas. The National Contact Point for Germany is located at the Federal Office for Migration and Refugees in Nuremberg. Its main task is to implement the annual work programme of the EMN. This includes the drafting of the annual policy report "Migration, Integration, Asylum" and of up to four topic specific studies, answering Ad-Hoc Queries launched by other National Contact Points or the European Commission. The German National Contact Point also carries out visibility activities and networking in several forums, e. g. through the organisation of conferences or the participation in conferences in Germany and abroad. Furthermore, the National Contact Points in each country set up national networks consisting of organisations, institutions and individuals working in the field of migration and asylum.

In general, the National Contact Points do not conduct primary research but collect, analyse and present existing data. Exceptions might occur when existing data and information are not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all EU Member States plus Norway in order to achieve comparable EU-wide results. Furthermore, the EMN has produced a Glossary, which ensures the application of comparable terms and definitions in all national reports and is available on the national and international EMN websites.

Upon completion of national reports, the European Commission drafts a Synthesis Report. This report summarises the most significant results of the individual national reports and thus allows an overview at the European level. In addition, topic-based policy briefs, so-called EMN Informs, are produced in order to present and compare selected topics in a concise manner. The EMN Bulletin, which is published quarterly, informs about current developments in the EU and the Member States. With the work programme of 2014, the Return Expert Group (REG) was created to address issues around voluntary return, reintegration and forced return.

All EMN publications are available on the website of the European Commission Directorate-General for Migration and Home Affairs. The national studies of the German National Contact Point as well as the synthesis reports, Informs and the Glossary are also available on the national website: www.emn-germany.de



Contents

	Summary	5
	The European Migration Network	9
1	Introduction	15
2	Political, legal and institutional developments	22
3	Legal migration and mobility	27
4	International protection and asylum	40
5	Unaccompanied minors and other vulnerable groups	57
6	Integration and anti-discrimination measures	63
7	Irregular migration, smuggling of migrants and border control	77
8	Return migration	86
9	Human trafficking	96
10	Migration and development	101
	Bibliography	108
	Abbreviations	139
	Tables / Figures	146
	Publications of the Research Centre of the Federal Office	147

Table of Contents

Summary	5
The European Migration Network	9
1 Introduction	15
1.1 General structure of the political system and institutions for migration, integration and asylum	16
1.2 General structure of the legal system for migration, integration and asylum	18
1.2.1 Legislative authority of the Federal Government and the Länder	18
1.2.2 Law and statutory instruments at the Federal level	19
1.2.3 Legislative authority and regulations at the EU level	20
2 Political, legal and institutional developments	22
2.1 General political developments	22
2.2 Overview of the main political developments and debates on migration, integration and asylum	24
3 Legal migration and mobility	27
3.1 Economic migration	27
3.1.1 Background and general context	27
3.1.2 National developments	28
3.1.3 Developments referring to the EU	29
3.2 Family reunification	30
3.2.1 Background and general context	30
3.2.2 National developments	30
3.3 Students and researchers	31
3.3.1 Background and general context	31
3.3.2 National developments	32
3.3.3 Developments referring to the EU	33
3.4 Other legal migration	33
3.4.1 Background and general context	33
3.4.2 National developments	35
3.5 Nationality and naturalisation	36
3.5.1 Background and general context	36
3.5.2 National developments	37

3.6	Visa policy	37
3.6.1	Background and general context	37
3.6.2	Developments referring to the EU	38
4	International protection and asylum	40
4.1	National asylum system	40
4.1.1	Background and general context	40
4.1.2	National developments	41
4.1.3	Developments referring to the EU	51
4.2	European Asylum Support Office (EASO)	52
4.2.1	Background and general context	52
4.2.2	Developments referring to the EU	53
4.3	Cooperation with third countries, resettlement, humanitarian admission, relocation	54
4.3.1	Background and general context	54
4.3.2	National developments	54
4.3.3	Developments referring to the EU	54
4.3.4	International developments	56
5	Unaccompanied minors and other vulnerable groups	57
5.1	Unaccompanied minors	57
5.1.1	Background and general context	57
5.1.2	National developments	58
5.2	Other vulnerable groups	61
5.2.1	Background and general context	61
5.2.2	National developments	61
6	Integration and anti-discrimination measures	63
6.1	Integration	63
6.1.1	Background and general context	63
6.1.2	National developments	66
6.1.3	Developments referring to the EU	71
6.2	Anti-discrimination efforts	71
6.2.1	Background and general context	71
6.2.2	National developments	73
7	Irregular migration, smuggling of migrants and border control	77
7.1	Irregular migration and smuggling of migrants	77
7.1.1	Background and general context	77
7.1.2	National developments	78
7.1.3	Developments referring to the EU	80
7.1.4	International developments	80

7.2	Border control	81
7.2.1	Background and general context	81
7.2.2	National developments	81
7.2.3	Developments referring to the EU	82
7.2.4	International developments	83
7.3	European Border and Coast Guard Agency (Frontex)	84
7.3.1	Background and general context	84
7.3.2	Developments referring to the EU	85

8 Return migration 86

8.1	Background and general context	86
8.1.1	Voluntary return and assisted voluntary return	86
8.1.2	Forced returns	87
8.1.3	Reintegration	88
8.2	National developments	89
8.2.1	Voluntary returns and reintegration	89
8.2.2	Forced return	91
8.3	Developments referring to the EU	94

9 Human trafficking 96

9.1	Background and general context	96
9.2	National developments	97
9.3	International developments	99

10 Migration and development 101

10.1	Background and general context	101
10.1.1	Discussion on migration and development	101
10.1.2	Actors involved	102
10.2	National developments	103
10.3	Developments referring to the EU	106

Bibliography	108
---------------------	------------

Abbreviations	139
----------------------	------------

Tables / Figures	146
-------------------------	------------

Publications of the Research Centre of the Federal Office	147
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1 Introduction

Structure and content

The 2017 Policy Report provides an overview of the most important political discussions as well as political and legislative developments in the areas of migration, integration, and asylum in the Federal Republic of Germany in the year 2017. Nevertheless, it does not purport to be exhaustive. Its main focus is on developments concerning third-country nationals. The rules concerning the mobility of EU citizens within the EU and changes to these rules do not form part of the present report. The report was written by the German National Contact Point for the European Migration Network (EMN) at the Federal Office for Migration and Refugees (BAMF) in Nuremberg and is intended to provide the institutions of the EU and the authorities and institutions of the Member States with the information they require in order to support policymaking in the European Union.

The findings gathered for the EMN are also intended for the public. The results of the national policy reports will be included in a comparative synthesis report – the ‘Annual Report on Migration and Asylum’ – prepared and released by the European Commission. In addition, the European Commission (which co-ordinates and co-finance the work of the EMN) also prepares topic-based ‘Country Fact Sheets’ that build on the policy reports of the Member States and provide a comparison of the national results.

Chapter 1 provides an overview of the structure of the political system and the existing institutions as well as the general legal structure in the areas of migration, integration and asylum in 2017. Chapter 2 outlines relevant political and legislative developments, as well as important political debates. Chapters 3 to 9 focus on specific political and legal measures in certain areas of immigration and asylum policy, while Chapter 10 takes a look at the interaction between migration and development.

This 14th EMN Policy Report is based on the reports from previous years, even though several structural changes were made this year. The sub-chapters ‘Management of migration and mobility’, ‘Border control’ and ‘European Border and Coast Guard Agency (Frontex)’ were shifted from Chapter 3

(‘Legal migration’) to Chapter 7 (‘Irregular migration, human trafficking and border controls’). In addition, the Chapters ‘Irregular migration, human trafficking and border control’ (now Chapter 7) and ‘Return’ (now Chapter 8) swapped places.

Methodology

The 2017 Policy Report is based on numerous sources of data and information. The information provided is based on information from German Federal authorities as well as factual information from the relevant organisational units of the Federal Office for Migration and Refugees. For example, the Federal Police (BPOL) provides relevant information on border controls and German participation in Frontex missions.

Information on political debates and the status of legal developments is drawn primarily from printed publications and minutes of plenary meetings of the Bundestag and Bundesrat, statutory instrument and law gazettes, and official statements from ministries, authorities, and political parties made to the press or in public programmes as well as from publications by the Federal Office for Migration and Refugees and the National Contact Point for the European Migration Network. Relevant statements or publications from non-governmental or international organisations, as well as relevant news coverage from national media were also included for specific thematic areas. All external sources are explicitly cited.

Most figures and statistics were provided by the Federal Office for Migration and Refugees, the Federal Statistical Office (StBA), the Federal Labour Office (BA) and the Central Register of Foreigners (AZR). Since the editing of the 2017 EMN Policy Report was finished by April 2018, some data on migration for 2017 were not yet available at the time the report was written. In such cases, the report uses the most recent available data. Events and measures were chosen and weighted based on how relevant the facts and developments could be to the work of policy-makers, both on a national and European level. Specifically, it was necessary to limit the number of issues addressed in the section on important political and legislative debates (Chapter 2.2).

Terms and definitions

The terminology used in this report is largely based on the EMN Asylum and Migration Glossary. The German version 5.0 will be released in 2018 and is available for download¹ (EMN/COM 2018). Terms referring specifically to the legal situation in Germany are regularly explained in the text or in footnotes. Background information from previous EMN policy reports is referenced accordingly.

1.1 General structure of the political system and institutions for migration, integration and asylum

In the Federal Republic of Germany, legislative and executive authority is divided between the Federal Government and the 16 Länder. The executive branch operates on three principles: the chancellor principle, the collegiate (or cabinet) principle, and the departmental principle. Under the chancellor principle, the chancellor sets policy guidelines and manages the affairs of the Federal Government. Under the collegiate (or cabinet) principle, however, issues of general political importance must be decided by a majority of ministers. Finally, the departmental principle gives the ministers responsibility for and the authority to run their departments.

Below is a brief outline of the roles of the top actors in asylum, immigration, and integration policy.²

The **Federal Ministry of the Interior, Building and Community** (BMI; until March 2018: 'Federal Ministry of the Interior') has primary responsibility. In addition to drafting legislation, it addresses European harmonisation and supervises the Federal Office for Migration and Refugees and the Federal Police (BPOL) as the central operational authorities in the areas of asylum, migration, integration and return policies. Since 2017, the Federal Ministry of the

Interior also runs the 'Repatriation Support Centre' (ZUR), which coordinates the operative efforts of the Federal and Land authorities in the areas of both voluntary and forced returns. The Repatriation Support Centre consists of representatives of the Federal Ministry of the Interior, the Federal Office for Migration and Refugees, the Federal Police and the Länder. Another important venue for policy-making is the Permanent Conference of Ministers and Senators for the Interior of the Länder (IMK), in which the Federal Minister of the Interior participates in an advisory role. The conference usually takes place twice a year, and its unanimous decisions serve as policy recommendations with strong binding effects that are often taken into consideration in the legislation and administrative practice of the Länder and the Federal Government. In 2017, the 208th and 209th meetings of the Permanent Conference took place in Quedlinburg on 6 – 8 June 2017 and in Magdeburg on 28 – 30 November, 2017, respectively.

The **Federal Ministry of Labour and Social Affairs (BMAS)** is also active in the fields of migration and integration. In coordination with the Federal Ministry of the Interior, it works on the basics of the employment of migrants and their integration into the labour market. The **Federal Labour Office (BA)**, which runs a nationwide network of employment agencies and branches, is supervised by the BMAS. The Federal Labour Office is responsible for "access to the labour market (employment, vocational training, internships), work permit procedures, access to support benefits and [...] training and qualification offers" (BA 2016). Issues of labour migration and the integration of migrants into the labour market are also addressed by the Conference of Ministers and/or Senators for Labour and Social Affairs (ASMK) which, similar to the IMK, helps the Länder to work together to coordinate their interests in labour and social policy. The annual ASMK meeting took place in Potsdam on 6 and 7 December 2017.

The diplomatic missions abroad supervised by the **Federal Foreign Office (AA)** are responsible for passport and visa issues, which means that they are the first point of contact for those foreign nationals who need a visa to enter Germany.

Since 2016, the **Federal Ministry for Economic Cooperation and Development (BMZ)** has been expanding its efforts in the area of voluntary return and reintegration of foreign nationals. While, until then, the BMZ focused on (temporary) return support for qualified workers, it is now cooperating more closely with the Federal Ministry of

¹ The German version of the EMN Glossary can be downloaded from the website of the German National Contact Point for the EMN: www.emn-deutschland.de. An online version in English and other available languages is available on https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary/index_a_en (21 January 2018).

² We wish to thank Dana Wolf, Armina Grlic and Jakub Czarnecki for their research and editing assistance during their internships at the Research Centre of the Federal Office for Migration and Refugees.

the Interior and running return and reintegration programmes, which also address persons who are obliged to leave the federal territory (see Chapter 10).

The ‘**Federal Government Commissioner for Migration, Refugees, and Integration**’ is appointed by the Federal Government. Since 2005, the office of the Commissioner has been a Minister of State under the purview of the Federal Chancellery. The Commissioner’s task is, in particular, to support the Federal Government in developing its integration policy, and s/he shall be involved in relevant law-making projects. In addition, s/he is responsible for further developing the necessary conditions for the most harmonious co-existence possible between foreigners and Germans and between different groups of foreigners (Section 93 subs. 2 of the Residence Act)³.

Similar to the IMK and ASMK, the Ministers and Senators of the Länder responsible for integration regularly meet to discuss and coordinate political projects on integration (**IntMK**). The 12th IntMK took place in Friedrichshafen on 16 and 17 March 2017.

The ‘**Federal Government Commissioner for Repatriation Issues and National Minorities**’, whose office was created in 1988, operates under the Federal Ministry of the Interior. S/he is responsible for coordinating all measures relating to ethnic German repatriates. The Commissioner is the central contact for national minorities and serves as a contact for ethnic Germans who still live in the countries of origin of the repatriates. Furthermore, the Commissioner co-ordinates assistance measures and co-chairs the existing government committees for issues of German minorities (BMI 2017a).

In 2017, the Federal Ministry of the Interior created the position of a ‘**Commissioner for Refugee Management Commissioner**’ (BFM) and appointed Frank-Jürgen Weise, the interim head of the Federal Office for Migration and Refugees from September 2015 to end-2016. The Commissioner’s task was to initiate cross-level and cross-authority solutions to implement asylum procedures, promote returns, improve the quality of asylum-related data and strengthen co-operation in the field of integration (see Grote 2018: 29). The position was abolished at the end of 2017.

The **Federal Office for Migration and Refugees (BAMF)** is a superior Federal authority among the subordinate authorities of the Federal Ministry of the Interior and performs numerous tasks in the field of migration, integration, and asylum inter alia on the basis of the Residence Act and the Asylum Act. At its arrival centres, branch offices and decision centres, its employees examine the applicants’ right to asylum, which is enshrined in the German constitution, and conduct all asylum procedures in Germany, including the Dublin procedure to determine responsibility in the asylum procedure. They determine the applicants’ right to asylum, their refugee status under the Geneva Convention relating to the Status of Refugees and the requirements for subsidiary protection under the Qualification Directive and for national bans on removals (see Chapter 4.1). In addition, the Federal Office for Migration and Refugees coordinates the humanitarian admission programmes and procedures of the Federal Government and the Länder, as well as Germany’s participation in the UNHCR and EU resettlement and relocation programmes (see Chapter 4.3).

The Federal Office for Migration and Refugees is also responsible for developing and implementing the national integration programme and for the registry of the German Islam Conference (see Chapter 6), for conducting applied and policy-related migration research, for promoting voluntary return and reintegration (see Chapter 8), for running the Central Register of Foreigners, the national ICT contact point, the national contact point for EU Blue Cards, the national REST contact point in the framework of legal migration and the EU-wide promotion of immigration of qualified workers, the national contact point for the EU long-term resident status directive (see Chapter 3.3), for conducting the admission procedure for Jewish immigrants (see Chapter 3.4), for coordinating the authorities responsible for labour migration, and for taking measures against threats to public safety under immigration, asylum, and nationality laws. In addition, the BAMF has been running the Advice Centre on Radicalisation since 2012. It offers advice to persons who “observe the Islamist radicalisation of a relative or acquaintance” (BAMF 2017a).

The **foreigners authorities** in the administrative districts and larger cities are responsible for practically all procedures relating to residence and passports under the Residence Act, for implementing other immigration regulations, including decisions about removals and its organisation, and for examining any bans on removals outside the authority

3 Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory.

of the BAMF. The foreigners authorities from Germany's major cities meet twice a year to exchange experiences.

The **Federal Police** is the Federation's police force and, as such, is supervised by the Federal Ministry of the Interior. It secures the borders of the German federal territory (border protection) in order to prevent and stop unlawful entry and to fight people smuggling. Border security refers to policing the borders, conducting checks on cross-border traffic, including examining travel documents and authorising entry, conducting investigations along the border, and averting dangers affecting border security in an area up to 30 km inside land and 50 km inside sea borders. The duties of the Federal Police emanate from the Federal Police Act and other statutory provisions, such as those set forth by the Residence Act (Section 71 subs. 3 of the Residence Act) or the Asylum Act (Section 18 of the Asylum Act). The duties of the Federal Police with regard to the right of residence include refusing entry to and removing foreigners at or near the border following unauthorised entry, revoking visas in certain cases and carrying out the measures that go hand in hand with visa revocation. The Federal Police is also responsible for forced returns and coordinating the escorted removal via air of third-country nationals residing illegally in the federal territory. In doing so, it closely cooperates with other authorities, specifically the foreigners authorities (see Chapter 8).

Among its many other administrative duties on behalf of the Federal Government, the **Federal Office of Administration (BVA)** is responsible for the entry and reception procedures for ethnic German repatriates. It also runs a central register portal, which provides the foreigners authorities and diplomatic missions abroad with a selection of the data in the Schengen Information System (SIS)⁴ and all eligible authorities with access to the Visa Information System (VIS), and runs, on behalf of the Federal Office for Migration and Refugees, the records in the Central Register of Foreigners (AZR), which consist of a general database and the Visa File.

1.2 General structure of the legal system for migration, integration and asylum

1.2.1 Legislative authority of the Federal Government and the Länder

Legislative authority is also divided between the Federal level and the Länder. Migration issues such as nationality, freedom of movement, immigration and emigration, passports, registration and identity documents as well as right of residence and permanent settlement for foreign nationals have been regulated by Federal law. Likewise, all overarching legislation on asylum and refugees has been adopted at nationwide level. Major policy areas in terms of migration that are almost exclusively under the jurisdiction of the Länder are education, research, and policing.

In addition, the Länder effectively help to shape in particular the enforcement, i.e. the administrative implementation, of the law by the foreigners authorities through decrees and administrative regulations. The Länder are also responsible for the accommodation of asylum seekers and for the provision of cash benefits and in-kind assistance. Moreover, several Länder (Baden-Württemberg, Bavaria, Berlin and North Rhine-Westphalia) have passed their own integration acts. Other Länder have adopted integration plans or concepts (see Chapter 6.1.2).

The Länder also shape Federal law via the German Bundesrat, which consists of representatives from the 16 Länder and has extensive rights of involvement and veto power. When passing laws, the German Bundesrat has a similar role to the upper houses or senates in other parliamentary democracies. While the German Bundesrat debates all bills passed by the German Bundestag, its approval is only required for laws that specifically affect relations between the Federal Government and the Länder (so-called consent bills). In all other instances (so-called objection bills), bills rejected by the German Bundesrat can still be passed by a qualified majority in the German Bundestag. Since practically all political action in the area of migration and asylum directly affects the Länder in one way or another and burdens them with administrative tasks, such bills usually have to pass the German Bundesrat. At the level of the Länder, authority on asylum and migration issues is usually vested in the

⁴ The German Federal Criminal Police (BKA) acts as national central agency for the SIS (SIRENE; similar offices have been established in all Member States). It is responsible for the national and international exchange of information in connection with SIS searches (BKA 2018a).

Ministries of the Interior, while integration issues may be covered by different ministries (for example the ministries of social or family affairs or the ministries of justice).

1.2.2 Law and statutory instruments at the Federal level

German migration and asylum law is based on international law, European Union law, and German constitutional and statutory law.

The **Residence Act** (AufenthG) forms the core legal basis for the entry, residence and economic activity of third-country nationals. It also defines the minimum legislative framework for state efforts to promote integration, mainly through language and orientation courses. However, the **Schengen Borders Code** (Regulation (EC) no. 562/2006) governs the initial entry and subsequent short-term stay of third-country nationals in Germany.⁵

Article 16a para 1 of the **Basic Law** (GG) grants the right to asylum to victims of political persecution. Applications for asylum are examined during the asylum procedure as set forth in the Asylum Act (AsylG).

The provisions of the **Asylum Act** are based on the Convention relating to the Status of Refugees (Geneva Convention) of 28 July 1951 and the EU Qualification Directive (Directive 2011/95/EU)⁶. Pursuant to these provisions, a third-country national who has a “well-founded fear of being persecuted for reasons of race⁷, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country” will be recognised as a refugee. The Asylum Act also defines the preconditions for subsidiary protection. Provisions

concerning the issuance of residence titles to persons eligible for asylum or subsidiary protection, to persons who are granted refugee status and to persons whose removal is inadmissible are part of the Residence Act (Section 25 subs. 1 and 2 as well as subs. 3 in conjunction with Section 60 subs. 5 and 7 of the Residence Act).

The **Act on Benefits for Asylum Seekers** (AsylbLG) forms the legal basis for providing benefits to asylum seekers during the asylum procedure and to other foreign nationals whose residence is not permanent (such as persons whose removal has been suspended).

The **Act on the Central Register of Foreigners** (AZRG) is the primary legal basis for the administration of government databases on foreign nationals.

The acquisition of German citizenship is governed by the **Nationality Act** (StAG), which includes the conditions under which immigrants can be naturalised, the conditions under which children born in Germany to foreign nationals receive German citizenship, and the extent to which multiple citizenship is possible.

The **General Act on Equal Treatment** (AGG) provides a comprehensive legal framework to protect citizens against discrimination not only by the state (as set out in the Basic Law), but also by private agents. The purpose of the Act is to prevent or to stop discrimination on racist grounds and grounds of ethnic origin, gender, religion or belief, disability, age or sexual orientation.

Below the Federal level, **several statutory instruments and administrative regulations** have been enacted to specify the legal framework for the residence, employment and integration of immigrants, as well as for benefits for asylum applicants and the procedures for handling them.

The **Ordinance Governing Residence** (AufenthV) clarifies issues relating to entry and residence in the Federal territory, fees, and procedural rules for issuing residence titles.

The **Employment Regulation** (BeschV) governs the procedures for the employment of foreigners whose access to the labour market is not regulated by law.

The **Ordinance on Integration Courses** (IntV) details the implementation of integration courses under the Residence Act, including terms of

5 Regulation (EC) 562/2006 of the European Parliament and of the Council of 15 March 2006 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

6 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

7 The term “race” is used in accordance with the wording of the Geneva Convention (for a critical reflection on the term and an alternative proposal to change the term into “racist”, see ADS 2015).

attendance, data transmission, fees, the basic structure of the courses, course duration, and course content. It also governs the admission procedures for public and private course providers.

The **Ordinance on Determining Responsibilities in the Area of Asylum** (AsylZBV) contains provisions on the competencies and responsibilities of the key operational authorities in the asylum procedure (Federal Office for Migration and Refugees, border authorities, Federal Criminal Police).

The **Ordinance on Naturalisation Tests** (EinbTestV) governs the testing procedure for naturalisation.

The **General Administrative Regulation to the Residence Act** (AVwVAufenthG), which took effect in October 2009, serves to standardise administrative practices in the application of the Residence Act throughout the Federal territory. It sets “binding standards for the interpretation of indeterminate legal concepts and existing discretion” (Bundesrat 2009: 2).

1.2.3 Legislative authority and regulations at the EU level

The European Union has legislative authority in several areas of migration policy, with the scope of its competencies differing depending on the individual field. The EU exercises its legislative powers mainly by adopting regulations and directives. Regulations must be applied directly by the Member States; they have the same status as national laws and need not be implemented separately. Directives must be transposed into national law and thus become a part of national acts, such as the Residence Act or the Asylum Act. Directives come with a timeframe, within which they should be implemented by national law, and give the Member States more leeway concerning their integration into national law.

Border controls and visa rules

Simultaneously with the abolishment of internal border controls, the EU adopted the **Schengen Borders Code** (Regulation (EU) no. 2016/399), which defines uniform entry conditions and rules for border control at external borders. The EU has sole legislative authority concerning the issuance of short-stay visas for stays of up to 90 days within a timeframe of 180 days. The **EU Visa Code** (Regulation (EC)

810/2009)⁸ contains uniform rules for the visa procedure and the conditions for the issuance of such visa (Hailbronner 2017a: 32).

Common European Asylum System (CEAS)

Since the Amsterdam Treaty of 1999, the EU also has legislative authority in the fields of asylum and refugee policy. The goal is to create a Common European Asylum System and a uniform status of protection in the EU (Article 77 para 2 TFEU). The most important EU Directives and Regulations in the fields of asylum and refugee policies are as follows:

The **Dublin Regulation** (Regulation (EU) no. 604/2013)⁹ defines the criteria for determining the Member State responsible for processing an asylum application.

The **Eurodac Regulation** (Regulation (EU) no. 603/2013)¹⁰ forms the legal basis for a central fingerprint database which allows to enter and compare the fingerprints of asylum seekers and irregular migrants in order to determine via which Member State these persons have entered the EU.

The **Qualification Directive** (Directive 2011/95/EU) sets out common standards for the recognition of asylum applicants as refugees or beneficiaries of subsidiary protection and grants them specific rights, for example the right to residence, to work or to education.

8 Regulation (EU) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

9 Regulation (EU) no. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

10 Regulation (EU) no. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

The **Asylum Procedure Directive** (Directive 2013/32/EU)¹¹ contains rules and standards for the asylum procedure as well as provisions concerning legal protection, legal advice and legal representation.

The **Reception Directive** (Directive 2013/33/EU)¹² sets out standards for the accommodation, meals, employment opportunities and healthcare provided to asylum applicants.

Legal migration

There are EU Directives for certain areas of legal migration. One of them is the **Family Reunification Directive** (Directive 2003/86/EC)¹³, which contains provisions for family reunification with third-country nationals and EU member state nationals.

The **Permanent Residence Directive** (Directive 2003/109/EC)¹⁴ defines the legal status of third-country nationals who have been legally resident in an EU Member State for at least five years.

In the field of labour migration, the **Blue Card Directive** (Directive 2009/50/EC)¹⁵ established a right of residence and employment for highly qualified employees.

In addition, the EU has adopted directives on the employment of **seasonal workers** (Directive 2014/36/EU)¹⁶ and on **intra-corporate transfers** (Directive 2014/66/EU)¹⁷ of third-country nationals.

Moreover, the so-called **REST Directive** (Directive (EU) 2016/801)¹⁸ was adopted in 2016. It replaces former EU Directives concerning students and researchers and contains provisions for the residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

Irregular migration

The EU has also adopted directives on certain issues of irregular migration. The most important of them is the **Return Directive** (Directive 2008/115/EC)¹⁹, which contains provisions and standards for the treatment of third-country nationals staying irregularly on the territory of a Member State and for voluntary and forced returns.

The **Sanctions Directive** (Directive 2009/52/EC)²⁰ defines minimum standards for sanctions against employers who employ irregularly staying third-country nationals.

Under the **Victims' Directive** (Directive 2004/81/EC)²¹, victims of trafficking in human beings who are irregularly staying in the EU may be granted a temporary right of residence if they cooperate with the authorities during criminal proceedings.

11 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

12 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

13 Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

14 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

15 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

16 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose employment as seasonal workers.

17 Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

18 Directive (EU) 2016/801 of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.

19 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

20 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

21 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

2 Political, legal and institutional developments

2.1 General political developments

In 2017, presidential and parliamentary (Bundestag) elections took place. In addition, there were elections to the Länder parliaments of Saarland, Schleswig-Holstein, North Rhine-Westphalia and Lower Saxony.

Presidential elections

On 12 February 2017, the 16th Federal Convention elected former foreign minister Frank-Walter Steinmeier as Federal President. The CDU/CSU and the SPD had jointly nominated Steinmeier, who took his oath of office on 22 March 2017. In his inaugural speech, Steinmeier warned of populism, saying: “Never again should a political force pretend that it alone represents the will of the people and that all others are liars, intruders and traitors. I therefore urge you to ensure that wherever such forms of populism spread – whether in our own country or amongst our friends and partners – we all speak out together” (Der Bundespräsident 2017).

Parliamentary elections

On 24 September 2017, elections to the 19th Bundestag were held. The CDU/CSU alliance won the largest share of the vote (32.9%), but suffered a loss of 8.6 percentage points compared to the Bundestag elections in 2013. The SPD gained 20.5%, losing 5.2 percentage points. The Alternative for Germany (AfD) ranked third, with 12.6% of the vote, and entered the Bundestag for the first time. The FDP won 10.7% of the vote, i.e. 6 percentage points more than in 2013, when it had failed to enter the Bundestag. With a share of 9.2%, The Left (DIE LINKE) is also represented in parliament, followed by Alliance 90/The Greens (Bündnis 90/Die Grünen) with 8.9% of the vote (Der Bundeswahlleiter 2017a). Following the elections, the Union parties, the FDP and Alliance 90/The Greens started negotiations about

a so-called ‘Jamaica coalition’ (which is related to the colours of the parties and the colours of the Jamaican flag). However, the negotiations failed by the end of the year, and no new government was formed in 2017. Subsequently, CDU/CSU and SPD started coalition talks, which led to another ‘grand coalition’ in March 2018.

All parties represented in the Bundestag took a stance on migration, integration and asylum in their electoral programmes, and their views on specific measures and steering concepts differed markedly (see Chapter 2.2).

Land elections in Saarland

The CDU won the elections to the Land parliament in Saarland on 26 March 2017 with 40.7% of the vote and gained more than five percentage points compared to the Land elections in 2012. With 29.6% of the vote, the SPD came second. The Left ranked third (12.8%), followed by the AfD (6.2%). Alliance 90/The Greens and the Pirate Party failed to clear the 5% hurdle and were not returned to the Land parliament (Die Landeswahlleiterin Saarland 2017). The CDU and the SPD agreed to continue the grand coalition led by Annegret Kramp-Karrenbauer (CDU). Migration, asylum and refugee policy come within the remit of the Ministry of the Interior, Building and Sport run by Klaus Bouillon (CDU) (MIBS 2017), while integration policy is largely the responsibility of the Ministry for Social Affairs, Healthcare, Women and Family led by Monika Bachmann (CDU) (Ministerium für Soziales, Gesundheit, Frauen und Familie 2017).

In the field of ‘integration’, the coalition agreement foresees the expansion of language courses for migrants (CDU/SPD 2017: 85) and additional support for teachers of language lessons in regular classes at regular schools (CDU/SPD 2017: 54). The Land government plans to draft a “co-ordination and steering model for integration” and prepare an action plan for the medical treatment of traumatised refugees (CDU/SPD 2017: 85 et seq.).

Land elections in Schleswig-Holstein

Land elections in Schleswig-Holstein were held on 7 May 2017. With 32.0% of the vote, the CDU won the elections, followed by the SPD (27.3%), Alliance 90/The Greens (12.9%) and the FDP (11.5%). The AfD entered the Land parliament for the first time (5.9% of the vote), while the Pirate Party was not returned. The South Schleswig Voters' Association (SSW), the party of the Danish minority in the Land, got 3.3% of the vote²² and three seats in the Land parliament (Statistisches Amt für Hamburg und Schleswig-Holstein 2017: 3 et seq.) The CDU, the FDP and Alliance 90/The Greens agreed on a coalition led by prime minister Daniel Günther (CDU) and took over from the predecessor coalition of the SPD, Alliance 90/The Greens and SSW. Integration and migration are the responsibilities of the Ministry of the Interior, Rural Areas and Integration led by Hans-Joachim Grote (Landesregierung Schleswig-Holstein 2018).

The coalition agreement states that the new Land government will work towards a "modern and efficient immigration law" at the Federal level "which focuses on developing a concrete and coherent strategy to attract foreign talents". In addition, a Land action plan against racism is to be developed (CDU/Bündnis 90/Die Grünen/FDP 2017: 6 et seq.). The Land government announced that it would argue against an extension of the suspension of family reunification for beneficiaries of subsidiary protection at the Federal level (CDU/Bündnis 90/Die Grünen/FDP 2017: 89). At the same time, the recognition of foreign professional qualifications is to be improved and refugees up to an age of 27 shall be allowed to enter vocational school. Moreover, the hurdles to naturalisation shall be reduced for children and juveniles who attended school or grew up in Schleswig-Holstein as well as for persons who have particularly quickly or well integrated themselves into German society (CDU/Bündnis 90/Die Grünen/FDP 2017: 86 et seq.) Lessons in 'German as a second language' (DaZ) and in pupils' first languages are to be extended. For the latter, the Land plans to provide official options at selected schools, not least as an alternative to lessons provided by consulates, over whose content the Land has no control (CDU/Bündnis 90/Die Grünen/FDP 2017: 18). In co-operation with the UNHCR, Schleswig-Holstein is contemplating the creation of a Land programme to

receive 500 particularly vulnerable refugees, in particular women and children (CDU/Bündnis 90/Die Grünen/FDP 2017: 90).

Land elections in North Rhine-Westphalia

The CDU became the strongest party, with 33% of the vote, in the Land elections in North Rhine-Westphalia on 14 May 2017. It gained almost seven percentage points compared to the Land elections in 2012. The SPD came second; with 31.2% of the vote, it lost almost eight percentage points. The FDP ranked third (12.6%), followed by the AfD (7.4%) and Alliance 90/The Greens (6.4%). The Left just about failed to clear the 5% threshold (Der Landeswahlleiter des Landes Nordrhein-Westfalen 2017). The CDU and the FDP agreed on a coalition led by prime minister Armin Laschet (CDU) and took over from the predecessor coalition of the SPD and Alliance 90/The Greens. Joachim Stamp (FDP) runs the Ministry for Children, Family, Refugees and Integration, which was newly established in 2017 and is responsible for migration, asylum and integration affairs at the Land level (MKFFI 2017).

The governing parties say in their coalition agreement that a focus on work, education, language and values shall help to shift towards a new paradigm, from a non-binding to a binding integration policy (CDU/FDP 2017: 104). They plan to present an initiative for a "modern migration law" in the Bundesrat, which is to be based, among other things, on a points system (CDU/FDP 2017: 104 et seq.). The coalition plans to provide relief to the local authorities by sending them only beneficiaries of protection, but no longer asylum seekers with little prospect to remain. Removal procedures are to be sped up, and the Land government will support the classification of the Maghreb countries as safe countries of origin in the Bundesrat (CDU/FDP 2017: 109). An "integration strategy 2030 for North Rhine-Westphalia" and a concept for the labour-market integration of women are to be drafted (CDU/FDP 2017: 108). Moreover, the coalition agreement foresees the introduction of compulsory school education for refugees aged less than 25 years and the extension of Muslim religious education lessons in North Rhine-Westphalia (CDU/FDP 2017: 106 et seq.).

Land elections in Lower Saxony

Elections to the Land parliament in Lower Saxony took place on 15 October 2017. The SPD gained

²² The SSW is exempt from the 5% threshold in Schleswig-Holstein (Section 3 subs. 1 second sentence of the Schleswig-Holstein election law).

more than four percentage points in comparison to the elections in 2012 and won 36.9% of the vote. In contrast, the CDU lost two percentage points and obtained 33.6%. Alliance 90/The Greens came third (8.7%), followed by the FDP (7.5%) and the AfD (6.2%). The Left failed to leap over the 5% threshold (Niedersächsische Landeswahlleiterin 2017). The coalition between the SPD and Alliance 90/The Greens was replaced by a new coalition between the SPD and the CDU led by prime minister Stephan Weil (SPD). Migration and asylum policy in Lower Saxony comes within the remit of the Ministry of the Interior and Sport led by Boris Pistorius (SPD) (MI Niedersachsen 2017a). Integration policy is mainly the responsibility of the Ministry for Social Affairs, Healthcare and Equality, which is now run by Carola Reimann (SPD) (MS Niedersachsen 2017).

The coalition agreement announces an “inclusion-oriented integration policy” with a particular focus on the language and on labour-market integration (SPD/CDU 2017: 54 et seq.). Language and integration courses are to be offered already in reception facilities (SPD/CDU 2017: 39), and measures to prevent language course drop-outs are to be taken (SPD/CDU 2017: 55). Voluntary returns are to be strengthened, and consultation on this topic is to be extended. At the same time, obstacles to removals are to be removed (SPD/CDU 2017: 38) in order to enforce the removal of persons who might endanger public security and of criminal asylum applicants (SPD/CDU 2017: 39). The Land government plans to agree to the classification of the Maghreb countries as safe countries of origin in the Bundesrat, provided that the “constitutional preconditions are met” (SPD/CDU 2017: 39).

2.2 Overview of the main political developments and debates on migration, integration and asylum

At the beginning of and during 2017, political developments and debates in the area of migration, integration and asylum policy were shaped by the attack on a Christmas market in Berlin on 19 December 2016. Twelve people were killed and more than 50 injured when the Tunisian assassin Anis Amri drove a lorry into the Christmas market around the Gedächtniskirche. Amri was an asylum applicant who had used several different names to file asylum

applications at a number of places in Germany since July 2015. Before, he had already applied for asylum in Italy. In Germany, several investigations against Amri were underway, and he had been temporarily in custody to secure his departure. However, it was impossible to remove him because he lacked passport substitutes (Schneider 2017). The attack fuelled a debate about security gaps concerning potential terrorists or Islamist criminals among refugees, which had already started in 2016. This led to changes in administrative practice, a more restrictive asylum law and measures to facilitate forced returns.

In terms of administrative practice, already in 2016 the introduction of a core database allowed to introduce additional measures in order to unveil multiple registrations of asylum seekers (see Chapter 4.1.2.3). Asylum law provisions were tightened by the ‘Act to Improve the Enforcement of the Obligation to Leave the Country’, which entered into force on 29 July 2017 (see Chapters 4.1.2, 5.1.2, 8.1.2 and 8.2.2). The creation of the Repatriation Support Centre (ZUR) was one measure to facilitate removals; the Centre helps to coordinate the operative efforts of the Federal and Land authorities, including in the area of forced returns (see Chapter 8).

The parliamentary electoral campaign was another important factor in the debate about migration, integration and asylum policies, with some migration related but particularly asylum and integration related demands and proposals being particularly striking. Stricter asylum law provisions (see above), more forceful measures to ensure returns, the discussion about a resumption or further limitation of family reunification for beneficiaries of subsidiary protection, the introduction of an annual cap on the number of asylum seekers, the determination of the age of unaccompanied minors and the thrust of integration policies were the main issues.

Family reunification for beneficiaries of subsidiary protection

Family reunification for beneficiaries of subsidiary protection was one of the issues on which the debate focused. On 16 March 2016, the right to family reunification had been suspended for beneficiaries of subsidiary protection. Originally, this suspension was to remain in place until 16 March 2018 (see Chapter 4.1.2.2). The key question was now whether the suspension was to be prolonged beyond March 2018 or replaced by an alternative solution.

The SPD was against a prolongation and said so in a decision by its leadership committee: “Family reunification and family life contribute to integration. For this reason, we do not want to prolong the temporary suspension of family reunification” (Stempfle 2017). In contrast, the CDU/CSU supported a prolongation of the suspension (Stempfle 2017). The AfD called for a permanent stop to family reunification for beneficiaries of subsidiary protection (Breyton 2017), while The Left demanded a resumption of family reunification for beneficiaries of subsidiary protection (Fisser 2017). Both parties presented bills for their positions in December 2017 (see Chapter 4.1.2.2).

Alliance 90/The Greens also supported “unbureaucratic family reunification” for beneficiaries of subsidiary protection (Alliance 90/The Greens 2017b: 107). The German Institute for Human Rights, a civil society organisation, said that a prolongation of the suspension of family reunification for beneficiaries of subsidiary protection ran “counter to basic and human rights” (DIMR 2017b). It claimed the suspension had “a negative impact on society as a whole because the positive effects of family life cannot be used to promote integration” (DIMR 2017). Caritas and Diakonie, two church-related associations of the non-statutory welfare, were against a limit to family reunification, too. They claimed that the number of potential arrivals would be lower than generally assumed anyhow and therefore quite manageable (Die Welt 2017a).

Cap on refugee arrivals

A potential cap on the number of refugees which would be accepted in any given year was another key issue during the election campaign. The CSU repeatedly called for a limit of 200,000 persons within the humanitarian admission per year during the election campaign (Wittrock 2017; FAZ 2017; Zeit Online 2016). Chancellor Angela Merkel (CDU) refused this and emphasised repeatedly that the CDU did not plan to introduce such a cap (Die Welt 2017b). After the elections, the two parties agreed on a common line and formulated that “a total of 200,000 admissions per year on humanitarian grounds (refugees and asylum seekers, beneficiaries of subsidiary protection, family reunification, relocation and resettlement, minus forced and voluntary returns of future beneficiaries of protection) shall not be exceeded” while at the same time a commitment “to the right to asylum in the Basic Law and the Geneva Convention and to our

obligations under EU law to process any application for asylum” was made (CDU 2017). Alliance 90/The Greens were against a cap. Simone Peter, who was one of the two party leaders at the time, stated: “The basic right to asylum does not include a cap. A cap is therefore irrelevant. The CDU/CSU should be aware that we will not shift to the right on this issue” (Graw 2017). The FDP also refused to contemplate a “strict cap on the number of asylum seekers” (FDP 2017a). This cap and the discussion about family reunification were key issues during the negotiations about a potential CDU/CSU, FDP and Alliance 90/The Greens coalition after the elections; in fact, it was impossible to agree on this topic (and others). The talks failed on 20 November 2017.

Integration policy

In their electoral programme, the CDU/CSU called for binding agreements on integration measures (Hanewinkel 2017). In case of a refusal to co-operate or non-compliance with the law there should be consequences “up to the loss of the right to stay” (CDU/CSU 2017: 74). The SPD’s electoral programme put education at the centre of integration policy (Hanewinkel 2017) and focused on efforts to prevent that “the necessary refugee integration measures have to be borne exclusively by the local authorities” (SPD 2017: 76). In this regard, in 2017, additional Länder introduced so-called residence obligations, which forces particular groups of beneficiaries of protection as well as certain other status groups to take up residence at a specific place (positive residence obligation) or restricts taking residence in specific places (negative residence obligation; see Chapter 4.1.2.2).

The AfD demanded that immigrants with a permanent right to stay “assimilate”, saying that it was their “duty to adapt to their new home and to the German predominant common culture, not the other way round” (AfD 2017: 32). The FDP’s electoral programme claimed that current integration courses were only an “official minimum standard” and did not “meet the requirements of our modern immigration society any more”. The party called for a “new, modular integration programme which offers individualised support across several levels” (FDP 2017b: 69). The Left emphasised that integration was a mutual process which was a task for both immigrants and society as a whole (Hanewinkel 2017; DIE LINKE 2017: 64). Alliance 90/The Greens criticised in their electoral programme that the “inhumane tightening of the asylum law in the

last few years” hampered integration (Bündnis 90/Die Grünen 2017b: 99). Among other things, the party called for an integration law, for access to integration courses regardless of the residence status and for decentralised refugee accommodation (Bündnis 90/Die Grünen 2017b: 106).

Age assessment of unaccompanied minors

For young migrants, a lot depends on the question whether they are legally adults or not. Their age has an impact on whether they are entitled to specific support for children and youths, whether child-specific bans on removal apply etc. That is why the question of how age is assessed has repeatedly been discussed in the last few years. By end-2017, the debate was fuelled once again by a media report which claimed that many unaccompanied minors lied about their age (Leubecher 2017a) and by a murder in Kandel, where a jogger was killed by a refugee who had been registered as an unaccompanied minor, but was later found to be of age in a court-ordered medical report (Leubecher 2017b). Several politicians called for a law to make medical age assessments obligatory (Leubecher 2017b). Expert associations have rejected these calls and pointed out that it is difficult to determine a person’s age and that errors are common. They said this was “political posturing and dangerous propaganda” (BumF/Deutsches Kinderhilfswerk/IPPNW 2017).

According to the president of the German Medical Association, medical age determination methods are “difficult, expensive and beset with considerable uncertainties” (Ueberbach 2018). However, medical experts also claim that assessing “a potential age range, which can then be compared to the legally relevant age limits” may allow in certain cases “to exclude minority to the necessary degree of certainty, i.e. without reasonable doubt” (Rudolf 2018). A heated debate in the media ensued, which focused on the advantages and disadvantages of medical age determination methods and on the existing rules (Tieg 2018; Becker/Soldt 2018; Schughart 2018). Thomas de Maizière, who was minister of the interior at the time, demanded at the beginning of January 2018 that Book VIII of the German Social Code be amended accordingly and that standardised procedures be developed (BMI 2018b; see Chapter 5).

3 Legal migration and mobility

There are numerous legal possibilities to enter Germany, for example via economic migration, family reunification, or migration for study or research purposes. In addition, some groups of migrants may benefit from specific rules, for example for Jewish immigrants, ethnic German repatriates or easier labour market access for employees from the western Balkan countries. This Chapter will give a more detailed overview of these issues.

3.1 Economic migration

3.1.1 Background and general context

Legal basis of economic migration

Sections 18 to 21 of the Residence Act, in conjunction with the Employment Regulation, offer third-country nationals numerous opportunities to stay temporarily or permanently in Germany for remunerated activities. Foreign graduates of German universities and vocational schools, skilled workers, highly qualified workers, researchers and self-employed who have obtained part or all of their professional qualifications abroad can take advantage of more favourable conditions than the general rules. While, in principle, economic migration to Germany hinges on migrants' holding an employment offer, Section 18c of the Residence Act however allows that qualified workers can also obtain a residence permit for up to six months for the purpose of seeking employment. Since 2015, foreigners can also apply for a residence permit for up to 18 months for the purpose of having any professional qualifications acquired abroad recognised, for undergoing a training measure and for taking a subsequent examination (Section 17a of the Residence Act).

In 2012, the implementation of the European Union Directive on Highly Qualified Workers introduced the EU Blue Card (Section 19a of the Residence Act), which makes labour market access easier for highly qualified workers from third countries. The EU Blue Card is a specific residence title, which is initially issued for a maximum of four years. An EU Blue Card

may be issued if the holder has obtained a German or a recognised or comparable foreign university degree, has signed an employment contract or can provide a binding employment offer and will touch an annual gross salary of at least EUR 50,800²³. The EU Blue Card does not require a priority check and offers "advantages in terms of mobility, family reunification and consolidation of the right of residence" (Hanganu/Heß 2018: 5). Moreover, EU Blue Card holders may already be issued with a permanent settlement permit after 33 months of employment as a highly qualified worker. If their language skills are sufficient (level B), this period may even be shortened further, to 21 months.

In addition, the Federal Labour Office and the Federal Ministry of Labour and Social Affairs (BMAS) jointly prepare "a so-called positive list in cooperation with the Federal Ministry of Labour and Social Affairs on the basis of the skilled labour shortage analysis, covering occupations in which it is difficult to find domestic skilled workers. It is the basis for the possibility of obtaining the approval of the BA. Besides, it is intended to serve as a source of information for qualified applicants from third countries, making it transparent for them in which occupations and professions they have, in principle, prospects of becoming gainfully employed in Germany. It is limited to professions for which a qualified professional training is required. If the vocational qualifications of a job applicant in an occupation in which a labour shortage has been identified are established as being equivalent to German vocational qualifications, the Federal Employment Agency can issue approval without carrying out the usual priority examination. The statutory basis for this is set forth in Section 6 subsections 2 and 3 of the Ordinance on the admission of foreigners for the purpose of taking up employment" (Vollmer 2015: 40).

In addition to creating the necessary legal framework conditions, the Federal Government is taking practical measures and offering information and counselling in order to attract skilled workers. These include a central hotline on "Working and

²³ "The salary threshold for the issuance of an EU Blue Card drops to EUR 40,560 for natural scientists, mathematicians, engineers, doctors and IT specialists" (BAMF 2018a).

Living in Germany’ run by the Federal Office for Migration and Refugees and the Federal Labour Office, pilot projects in the framework of the ‘Make it in Germany’ portal run by the Federal Ministry for Economic Affairs and Energy (BMWi), the Federal Ministry of Labour and Social Affairs (BMAS) and the Federal Labour Office as well as regional “Study and Work” networks in the eastern Länder (Hanganu/Heß 2016: 88). Please see Chapter 6.1 for more details on the recognition of foreign vocational qualifications.

Special rules for nationals of western Balkan countries

As of 1 January 2016 and until end-2020, conditions for obtaining a residence permit for the purpose of employment have been eased for nationals of western Balkan countries, namely Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia (Section 26 subs. 2 of the Employment Regulation). Once the Federal Labour Office, which conducts a priority check, gives its approval, these nationals may take up any employment, regardless of whether they have had vocational training or can prove their knowledge of German. What is necessary, however, is that an employer in Germany has made them a concrete offer of employment (Burkert/Haase 2017: 2). In addition, the applicant must not have touched any benefits under the Act on Benefits for Asylum Seekers in Germany during the 24 months before the application²⁴.

The application must be filed with the relevant German diplomatic mission in the country of origin. This provision was adopted in response to the large number of asylum seekers from the western Balkans in 2014 and 2015 and their low protection ratio; it aimed to separate asylum from economic migration. The special rules for nationals of western Balkan countries were a completely new element in Germany’s migration and asylum policy. “While it did not introduce a ‘change of status’ in the sense that asylum seekers or rejected asylum applicants can obtain another residence title on the grounds of successful labour market integration, it reduced the hurdles for economic migration after a return to the countries of origin. This mitigated incentives to use the asylum system for immigration purposes, as an asylum application precludes economic

migration for some time” (Brücker/Burkert 2017: 2). The waiver of minimum qualification requirements for the employment offer is another specific feature. “This runs counter to the paradigm that labour market access should be largely limited to skilled and highly qualified workers” (Brücker/Burkert 2017: 18).

3.1.2 National developments

Statistics

Labour market development in Germany

As in the preceding years, the situation on the German labour market developed positively in 2017. The Federal Labour Office wrote of “dynamic economic growth” in 2017 (BA 2017a: 7). Germany’s GDP was up 2.2% in a year-on-year comparison (BA 2018: 5). Employment benefited accordingly. The number of employees subject to social security contributions rose to 37.79 million in October 2017, i.e. 743,000 more than in October 2016 (BA 2017a: 11). The unemployment quota dropped to 5.7% in 2017 (2016: 6.1%). On average, 2.53 million people were unemployed in 2017, i.e. fewer than in any other year since the reunification (tagesschau.de 2018). At the same time the number of recipients of unemployment benefits II (“Hartz IV”) who were able to work rose, too. According to the Federal Labour Office, this is due to a higher number of beneficiaries of protection who are entitled to welfare benefits (BA 2017a: 8).

The Federal Labour Office prepares skilled labour shortage analyses twice a year, with the latest analysis being published in December 2017. The Office found that skilled labour is scarce in certain professions, for example “some technical professions, construction-related professions and several healthcare-related professions” (BA 2017b: 4).

EU Blue Card

The EU Blue Card has become an instrument of legal immigration which enjoys increasing demand. In 2017, 21,727 EU Blue Cards were issued – an increase of 25.1% over the preceding year (2016: 17,362 EU Blue Cards). 24.2% of the third-country nationals who obtained an EU Blue Card came from India, 9.6% from China, 6.4% from the Russian Federation, 4.7% from Turkey and 4.1% from Ukraine. Overall, 76,833 persons have been granted an EU

²⁴ A transitional provision covered exemptions for western Balkan nationals who filed an asylum application between 1 January 2015 and 24 October 2015 and left Germany without delay after 24 October 2015.

Blue Card in Germany between the introduction of this instrument in August 2012 and the end of 2017. Germany remains the EU country with the largest share in the total number of EU Blue Card grants. In 2016, 84.0% of the total number of EU Blue Cards were issued by Germany (BAMF 2018b).

Consultation via the “Hotline Working and Living in Germany”

In 2017, 13,736 consultations were provided via the ‘Hotline Working and Living in Germany’. They covered 511 different reference professions (2016: 497), with almost 10% focussing on the profession of engineers. Callers had obtained professional degrees in a total of 180 different countries, with two-thirds having been obtained in a third country and one-third in another EU Member State (Liedtke/Vockentanz 2018a). A total of 71,444 consultation calls have been answered by the hotline between its establishment on 2 April 2012 and the end of 2017.

Development of the simplified legal labour migration channel for nationals of the Western Balkan countries

In 2017 25,341 visa were granted for remunerated purposes within the simplified legal labour migration channel for nationals of the Western Balkan countries pursuant to Section 26 subs. 2 of the Employment Regulation while the Federal Labour Office issued 74,577 approvals and 19,703 rejections in the same timeframe (Deutscher Bundestag 2018q: 9 et seq.).

There are several reasons for the significant discrepancy. Some of them relate to the applicants (e.g. lack or late filing of documents) or to employers in Germany (for example, the job offer is withdrawn before the visa is granted). In addition, there are capacity shortages at the diplomatic missions, which “are often not in a position to process all visa applications within an adequate timeframe. According to the Federal Government, applicants have to wait eight months and more for an appointment in Bosnia and Herzegovina or Kosovo and twelve weeks or more in Albania and Serbia. Only in Montenegro have no prolonged waiting periods been registered” (Brücker/Burkert 2017: 7). Long waiting periods for a visa appointment may entail problems because the Federal Labour Office’s initial approval is only valid for six months and because some employers will give the job to another applicant in the meantime (Brücker/Burkert 2017: 7). In response, the Federal

Foreign Office already increased its staff at the diplomatic missions to the western Balkan countries in 2016. Headcounts were raised further at specific missions in 2017, and additional increases were announced (Deutscher Bundestag 2017a: 4 et seq.).

3.1.3 Developments referring to the EU

Transposition of the EU Seasonal Workers Directive

On 1 August 2017, the ‘Act to Implement the EU Residence Directives on Labour Migration’ entered into force. Among other things, this Act transposes the EU Seasonal Workers Directive (Directive 2014/36/EU), which was to be implemented by 30 September 2016. The Directive deals with the entry and employment of third-country nationals for up to six months (Bundesrat 2017a: 1). This requires approval by the Federal Labour Office, which will also set the total number of approvals depending on the labour-market situation (Bundesrat 2017a: 61). The preconditions and the procedure for the issuance of the necessary work permit will be defined by a statutory instrument to be issued by the Federal Ministry of Labour and Social Affairs (Bundesrat 2017a: 21). Until the transposition of the Directive, agreements between the Federal Labour Office and the labour agencies of the countries of origin formed the basis for seasonal employment contracts for non-EU citizens. However, from 1993, this only covered countries which have in the meantime become EU Member States, which means that their nationals fully enjoy the free movement of workers (see BMI/BAMF 2014: 190).

Implementation of the EU Directive on Intra-Corporate Transfers (Directive 2014/66/EU)

The ‘Act to Implement the EU Residence Directives on Labour Migration’ also transposed the EU Directive on Intra-Corporate Transfers (“ICT Directive”; Directive 2014/66/EU), which was originally to be implemented by 29 November 2016. The Act introduces the so-called ‘ICT card’, a new residence title issued for intra-corporate transfers of managers, experts and trainees which go beyond a period of more than 90 days. In addition, the new provisions permit the residence of third-country nationals who already stayed in a different EU Member State in the framework of an intra-corporate transfer. They can be issued with a ‘mobile ICT card’ for a stay of more than 90 days. Under the ICT Directive,

persons holding a residence title issued for an intra-corporate transfer and who went through the newly regulated notification procedure for short term mobility from another EU Member State may stay and work for up to 90 days in Germany without holding a German residence title. ICT card and mobile ICT card holders are entitled to have their spouses or civil partners join them in Germany; the spouses or civil partners will not need to prove that they have a basic knowledge of German.

3.2 Family reunification

3.2.1 Background and general context

Marriage and the family enjoy special protection under Article 6 of the Basic Law. The European Convention on Human Rights (Article 8) and the Universal Declaration of Human Rights (Article 16) also call for particular protection of these institutions. In addition, the EU Family Reunification Directive (Directive 2003/86/EC), which was adopted in 2003, provides for an EU-wide framework for the family reunification of third-country nationals or nationals of the relevant Member State with third-country nationals²⁵. All national provisions concerning the family reunification of Germans or third-country nationals with other third-country nationals in Germany are set out in Sections 27 – 36 of the Residence Act. Civil partnerships receive practically equal treatment with marriages in terms of family reunification (Section 27 subs. 2 of the Residence Act).

The right to family reunification refers in principle to the core family, i.e. spouses and civil partners as well as minor unmarried children who join their parents or parents who join their unaccompanied minor children. Under certain conditions, other family members may also enter Germany “if necessary in order to avoid particular hardship” (Section 36 subs. 2 of the Residence Act). Since the amendment to the Residence Act and the Employment Regulation of 6 September 2013, all holders of a residence title for the purpose of family reunification are entitled to pursue an economic activity (Section 27 subs. 5 of the Residence Act).

Unless certain exemptions apply (for example for recognised refugees), certain preconditions must be met for family reunification (such as sufficient living space or a secure livelihood, Section 29 of the Residence Act). Since September 2007, spouses and civil partners of third-country nationals and Germans living in Germany need to prove that they are able to communicate in German at least on a basic level before they enter the country (Section 30 subs 1 first sentence no. 2 of the Residence Act). If the immigrants want to join nationals of certain countries (e.g., Australia, Japan, the United States) or family members who are permitted to reside in Germany on the grounds of certain residence titles (e.g., an EU long-term residence permit or an EU Blue Card), they are exempt from demonstrating German language skills. Moreover, the proof of language skills may be waived if, due to individual circumstances of the case, attempting to learn basic German is impossible or unreasonable for the spouse or civil partner (Section 30 subs. 1 third sentence no. 6 of the Residence Act).

Family reunification is not permitted under certain conditions, e.g. in case of a forced marriage or civil partnership or a marriage or civil partnership of convenience or if at least one of the spouses is under 18 years old (Section 27 of the Residence Act).

3.2.2 National developments

Statistics

In 2017, 117,991 visa were granted for the purpose of family reunification, i.e. 14,108 more than in the preceding year (2016: 103,883). In fact, the number of visa granted for the purpose of family reunification rose for the seventh year in a row. Most of these visa were issued to children aged below 18 who wanted to join a parent in Germany (2017: 43,337 visa). As in 2016, children were the largest group of persons who applied for entry for family reunification purposes. The second-largest group were spouses and civil partners who wanted to join their foreign partners (2017: 36,973), ahead of spouses and civil partners who wanted to join German partners (2017: 12,011; visa statistics of the Federal Foreign Office).

²⁵ The provisions for the family reunification of EU citizens with third-country nationals are set out in the Act on the General Freedom of Movement for EU Citizens and are therefore not covered by this report.

Restrictions on family reunification, Family Assistance Programme and cases of hardship

For an overview of the restrictions on family reunification for beneficiaries of subsidiary protection, the extension of Family Assistance Programmes and cases of hardship see Chapter 4.1.2.2.

3.3 Students and researchers

3.3.1 Background and general context

Students

Foreign students from third countries require a national visa prior to entering Germany²⁶, particularly if they plan to stay for more than three months. After their arrival, the foreigners authority will exchange this visa for a residence permit. Foreign students from third countries will usually need to meet additional requirements for being granted a residence permit for study purposes (Section 16 subs. 1 of the Residence Act). These generally include a letter of acceptance²⁷ from an accredited German university, proof of financing for the first academic year (in 2017: EUR 8,640), and proof of sufficient health insurance (Deutsches Studentenwerk 2018). Furthermore, they will need to prove that their knowledge of the language of training is sufficient, and a number of universities also require that they pass an admittance examination. Germany transposed the REST Directive (Directive (EU) 2016/801) in 2017. This led to the fact that now a claim to a residence permit for study purposes exists, if the preconditions are met. In addition, the REST Directive or rather the transposition of the directive improves the intra-European mobility of international students. However, with the implementation period for

the REST Directive running until 23 May 2018, numerous EU Member States did not yet transpose it in 2017, which resulted in restrictions to mobility.

Pursuant to Section 16 subs. 5 of the Residence Act, graduates may stay in Germany for up to 18 months in order to seek a job commensurate with their qualification. If they are successful, they may apply for a residence title for employment purposes (for example titles issued pursuant to Sections 18 or 19a of the Residence Act).

Researchers

There are three options for researchers from third countries for a legal stay in Germany:

1. a residence permit for research purposes (Section 20 of the Residence Act)
2. a residence permit issued by another EU Member State (apart from Denmark, the United Kingdom or Ireland) and short-term mobility within the meaning of the European REST Directive (Directive (EU) 2016/801)
3. a temporary residence permit for mobile researchers (Section 20b of the Residence Act).

In order to be eligible for a residence permit for research purposes, foreign nationals must have effectively concluded an admission agreement or a corresponding contract to conduct a research project. The residence permit allows researchers to take up teaching activities as well (Section 20 subs. 5 of the Residence Act). Visa for a residence permit for research purposes are usually granted in a fast-track procedure. Spouses and civil partners of researchers are allowed to work (Section 27 subs. 5 of the Residence Act). The residence permit for research purposes pursuant to Section 20 of the Residence Act also includes stays in other EU Member States for research purposes.

Third-country nationals who stay in the EU for research purposes and hold a residence title from another EU Member State (apart from Denmark, the United Kingdom and Ireland) within the meaning of the REST Directive (Directive (EU) 2016/801) are allowed to stay and research in Germany without a specific German residence title ('short-term mobility'). "This assumes that they work at a German research facility for a maximum of 180 days within a period of 360 days" (BAMF 2018c). The same applies, vice versa, to researchers from third countries who hold a residence permit pursuant to Section 20 of

26 This does not apply to students from the European Union and to students from Australia, Israel, Japan, Canada, the Republic of Korea, New Zealand, or the United States (Section 41 subs. 1 of the Ordinance Governing Residence) as well as Andorra, Brazil, El Salvador, Honduras, Monaco and San Marino (Section 41 subs. 2 of the Ordinance Governing Residence). Nationals of the countries listed above may apply to the appropriate foreigners authority for a residence permit for study purposes within 90 days after having entered Germany.

27 Those still waiting for a letter of acceptance or having to take an entrance examination may apply for a student applicant visa, which is then turned into a residence permit for study purposes in Germany upon submission to the foreigners authority at the place of study.

the Residence Act. They are mobile within the EU Member States (apart from Denmark, the United Kingdom and Ireland). However, with the implementation period for the REST Directive running until 23 May 2018, numerous EU Member States did not yet transpose it in 2017, which resulted in restrictions to mobility.

The third residence title for researchers has been newly introduced under the REST Directive (see below). Third-country nationals who already hold a residence permit within the meaning of the REST Directive from another EU Member State (apart from Denmark, the United Kingdom and Ireland) and plan to stay in Germany for more than 180 days for research purposes may apply for a specific residence title: the temporary residence permit for mobile researchers (Section 20b of the Residence Act).

Apart from these residence permits for research purposes, research activities may be carried out within the framework of a residence permit which is not explicitly granted for research purposes, but to a highly qualified individual. This may be the case under a residence permit for employment purposes (Section 18 of the Residence Act in conjunction with Section 5 of the Employment Regulation) or a permanent settlement permit for highly qualified third-country nationals (Section 19 of the Residence Act), which may be granted to teaching or scientific personnel in prominent positions. The same applies to the issuance of an EU Blue Card (Section 19a of the Residence Act; see Chapters 3.1.1 and 3.1.2). Applicants may choose between a residence permit pursuant to Section 20 of the Residence Act or an EU Blue Card at the time of the first issuance if they fulfil the preconditions for either of them (2.0.2.1.3 Guidelines of the Federal Ministry of the Interior)²⁸.

3.3.2 National developments

Statistics

339,829 foreign students were enrolled at German universities for the summer semester of 2017 (both those who completed primary education in Germany and those who completed it abroad; StBA 2017b: 23), and the number rose to 374,951 for the winter semester 2017/2018 (preliminary figures;

StBA 2018a). This means that 13.2% of the aggregate number of students at German universities (2,842,225) in the winter semester 2017/2018 were foreigners. One year before, in the winter semester 2016/2017, the number of foreign students had risen above 350,000 for the first time, coming in at 358,895, which means that the goal given out by the former Federal Government for 2020 was reached early (CDU/CSU/SPD 2013: 29; BMBF 2017b).

The latest figures for the number of foreign researchers at German universities refer to 2015. In 2015, a total of 43,129 foreign scientific and artistic personnel were employed by German universities, including 3,100 professors (DAAD/DZHW 2017: 96). “Compared to the preceding year [2014, the author], the share of foreign scientific staff has risen by 5%, and during the past ten years, it has increased by an aggregate 74%” (DAAD/DZHW 2017: 96). More than 50% of the foreign scientific personnel came from European countries. In 2015, the most important non-European countries of origin were China (2,640 scientists at German universities), the US (2,182), India (2,015) and Iran (1,453).

University tuition fees for foreign students in Baden-Württemberg from the winter semester 2017/2018

On 3 May 2017, the Land parliament of Baden-Württemberg adopted the ‘Act Amending the Land University Act’, which foresees that foreign students from countries outside the EU shall pay tuition fees of EUR 1,500 per semester for their first and of EUR 650 per semester for a second course of study from the winter semester 2017/2018. Baden-Württemberg is the only Land which levies tuition fees exclusively from foreign students. It argues that the number of foreign students has risen significantly and that the need for advice has increased accordingly. EUR 300 from the tuition fees per semester shall go directly to the universities in order to cover “resultant additional expenses” (MWK Baden-Württemberg 2017) and to improve the framework conditions for students. The Land also argues that 60% of the foreign students come from countries where tuition fees are comparable or considerably higher.

²⁸ Guidelines of the Federal Ministry of the Interior concerning the Act and the Statutory Instrument to implement European Union Residence Directives concerning Labour Migration.

3.3.3 Developments referring to the EU

REST Directive

The ‘Act to Implement the EU Residence Directives on Labour Migration’, which entered into force on 1 August 2017, transposed the REST Directive (Directive (EU) 2016/801), which had to be implemented by 23 May 2018. The transposition provided for various amendments and additions to the Residence Act and here the corresponding regulations on residence for study and research purposes (Section 16 et seqq. and 20 et seqq. of the Residence Act).

One of the amendments foresees that third-country nationals have a legal claim now to a residence title for study purposes if they meet the requirements. In addition, they have a legal claim now to a residence title for the purpose of seeking a job after graduation. Moreover, third country nationals are entitled to a residence permit for up to six months for the purpose of a study-related internship without approval by the Federal Employment Agency, provided that they meet the relevant preconditions (Section 17b of the Residence Act in conjunction with Section 15 no. 1 of the Federal Employment Regulation). These preconditions foresee that the potential interns are currently pursuing university studies or have graduated from university during the past two years. The new provisions will make it easier for students and researchers residing in another EU Member State (apart from Denmark, the United Kingdom or Ireland) to come to Germany for temporary research or study purposes; the same applies to third country nationals residing in Germany who want to stay temporarily in another EU Member State²⁹ (for example under the ERASMUS+ programme). Moreover, the spouses and civil partners of mobile researchers are allowed to join their partners during these short-term stays.

Furthermore, if students drop out of university, they will be able take up vocational training in a job (and, of course, be granted the necessary residence permit) where labour is scarce as defined by the Federal Labour Office.

Federal Office for Migration and Refugees becomes national contact point for the REST Directive (Directive (EU) 2016/801)

The ‘Act to Implement the EU Residence Directives on Labour Migration’, which entered into force on 1 August 2017, transposed the REST Directive (Directive (EU) 2016/801) and appointed the Federal Office for Migration as contact point pursuant to Article 37 of the Directive. The national contact point assumes certain information obligations as set out in the Directive and in Section 91d of the Residence Act.

3.4 Other legal migration

3.4.1 Background and general context

In addition to migration on humanitarian grounds, for educational and economic purposes and for reasons of family reunification, Jewish immigrants from the former Soviet Union and ethnic German repatriates have legal paths for immigrating to Germany.

Jewish immigrants

Germany has been admitting Jewish immigrants and their family members from the successor states of the former Soviet Union since 1990. Initially, the government of the German Democratic Republic (DDR) did so, and the Federal Republic of Germany continued this practice (Belkin 2017: 231 et seq.).³⁰ The Immigration Act, which entered into force on 1 January 2005, amended the procedure. Since then, the Federal Office for Migration and Refugees has been responsible for the procedure, which was defined in a practice direction³¹ in 2007. An advisory council for the “preparation, observation and

29 Apart from the United Kingdom, Ireland and Denmark.

30 German Democratic Republic: Item 6 of the Resolution on Preliminary Rules concerning the Residence of and Asylum for Foreigners taken at the 16th Meeting of the Council of Ministers of the German Democratic Republic on 11 July 1990 (see Belkin 2017: 231 et seq.); Federal Republic of Germany: Decision of the Conference of Minister Presidents of 9 January 1991.

31 Direction of the Federal Ministry of the Interior pursuant to Section 23 subs. 2 of the Residence Act concerning the admittance of Jewish immigrants from the former Soviet Union, excluding the Baltic countries, of 24 May 2007, last amended on 13 January 2015, in the version of 21 May 2015.

monitoring of the new procedure” was established, which is chaired by the Federal Ministry of the Interior, Building and Community and also includes representatives of the Central Council of Jews in Germany, the Union of Progressive Jews in Germany, the Federal Foreign Office, the Federal Office for Migration and Refugees and the Länder (BAMF 2017b: 1). The intention is to promote the integration of Jewish immigrants into both Jewish communities and German society as a whole, which is why the immigrants need to meet certain admission requirements. These include being a national of a successor state of the former Soviet Union, being able to prove that one of their parents or grandparents was Jewish, having basic German language skills (level A1 of the Common European Framework of Reference for Languages (CEFR)), being able to prove the ability to subsist in Germany and being able to be accepted into a Jewish community (BAMF 2017b: 2). Victims of National Socialism are exempt from needing the otherwise required ‘positive integration prognosis’³² and proving basic German language skills. Family members of applicants can also be admitted. The legal basis for admitting Jewish immigrants is formed by Section 23 subs. 2 in conjunction with Section 75 no. 8 of the Residence Act and the Direction of the Federal Ministry of the Interior of 24 May 2007 in its amended version of 21 May 2015. The Federal Ministry of the Interior is authorised under Section 23 subs. 2 of the Residence Act to admit foreign nationals in order to safeguard special political interests in consultation with the supreme authorities of the Federal Länder.

Due to the conflict in eastern Ukraine, reception conditions were eased for Jewish immigrants from the districts of Lugansk and Donetsk in 2015. They need not prove their knowledge of German (level A1 CEFR) to enter Germany, provided that they meet all other requirements. However, they will need to prove their language skills to the competent local foreigners authority within 12 months after entering Germany. The relevant direction was issued by the Federal Ministry of the Interior in consultation with the Federal Länder and took effect on 13 January 2015. Moreover, applications from Ukraine have been given priority by the Federal Office for Migration and Refugees since 2015 (Deutsche Botschaft Kiew 2018).

Ethnic German repatriates

The Federal Expellees Act³³ contains the relevant provisions for the admittance of ethnic German repatriates. The entry and reception procedure is conducted by the Federal Office of Administration (BVA); applications are filed in the countries of origin, and applicants may only enter the country after having received their admission notification. Ethnic German repatriates shall automatically acquire German citizenship when they are issued a repatriates certificate (see Section 7 of the Nationality Act (StAG) in conjunction with Section 17 subs. 1 of the Federal Expellees Act). Reception hinges on the applicant’s being an ethnic German (Section 6 subs. 1 of the Federal Expellees Act), which is regularly assumed for persons who have at least one (ethnic) German parent and have declared their willingness to be part of the German people, for example by providing a declaration of nationality (e.g. by certificates of birth, marriage or death) or in other ways³⁴. In addition, applicants must be able to hold a simple conversation in German (Section 6 subs. 2 of the Federal Expellees Act). Applicants from other countries (including Estonia, Latvia or Lithuania) than the former Soviet Union will also need to prove that they were subject to discrimination or consequences of past discrimination on the grounds of their being “ethnic Germans” (Section 4 subs. 2 of the Federal Expellees Act). Since the entry into force of the Tenth Act to Amend the Federal Expellees Act on 14 September 2013, spouses, civil partners and children of ethnic German re-settlers and repatriates may also be admitted retroactively if they have at least a basic knowledge of German (level A1 CEFR) (Section 27 subs. 1 of the Federal Expellees Act). Before, these groups were only admitted if they entered Germany together with the applicant (Koschyk, n.d.: 1 et seq.). The numbers of ethnic German repatriates have been steadily rising since this provision is in force (Beauftragter der Bundesregierung für Aussiedlerfragen und nationale Minderheiten 2018).

Ethnic German re-settlers and repatriates are entitled to attend an integration course for free after their entry into Germany (Section 9 subs. 1 of the Federal Expellees Act). Moreover, in 2006 the Federal Office started its programme “Identity and

³² An integration prognosis is based, among other things, on a person’s knowledge of German, their education and training and their age and professional experience (BAMF 2017b: 3).

³³ Federal Expellees and Refugees Act.

³⁴ In particular by proving knowledge of German at the level B1 CEFR or by proving that they learned German in their families.

Integration PLUS”, which is especially directed at ethnic German repatriates, begins after the regular integration course and focuses on “the specific situation and needs of ethnic German repatriates” (BAMF 2017c). During the course, participants focus on questions concerning their “specific identity”, “problems and opportunities in everyday life in the new environment”, “education in Germany” and “opportunities on the German labour market, including self-employment” (BAMF 2017c).

Ethnic German repatriates from eastern Ukraine also benefit from easier admittance procedures. Since mid-2014, applications by persons who can credibly claim to be affected by the fighting are given priority during the written procedure. Still, applicants need to provide proof of their language skills and their origins (EMN/BAMF 2016a: 28 et seq.).

3.4.2 National developments

Jewish immigrants

In 2017, 872 Jewish immigrants entered Germany pursuant to the admission procedure for Jewish immigrants from the successor states of the former Soviet Union (2016: 688). The fights in eastern Ukraine are one reason for this increase. While the number of Jewish immigrants rose again, it is still low in comparison to former years. For example, in 2002 a total of 19,262 Jews and their family members came to Germany from the former Soviet Union.

Since 1993, the year in which the statistical series begins, a total of 208,095 Jewish immigrants (including family members) have entered Germany under the regular procedure (data as of December 2017). An additional 8,535 persons had filed an application before the starting date of the statistics or outside the regular procedure until 10 November 1991. This means that a total of 216,630 persons have entered Germany via this procedure by end-2017.

Ethnic German repatriates

In 2017, 7,059 ethnic German repatriates came to Germany – a year-on-year increase by 471 (2016: 6,588) and the fifth increase in a row (Beauftragter der Bundesregierung für Aussiedlerfragen und nationale Minderheiten 2018). 7,043 of

them came from the successor states of the former Soviet Union. Of these, 3,116 were from the Russian Federation, 2,690 from Kazakhstan, 795 from Ukraine and 458 from 15 other successor states (BVA 2018a: 6).

Since 1950, more than 4.5 million ethnic German re-settlers and repatriates and their family members have been admitted into Germany. They form one of the largest groups of immigrants in Germany, mainly due to the high influx during the 1990s (in 1990, for example, their number totalled 397,073).

Draft bill for equal pension treatment of Jewish immigrants

On 13 June 2017, Alliance 90/The Greens presented a ‘Draft for the Amendment of the Foreign Pensions Act’ (German: *Fremdrentengesetz*; FRG) to the Bundestag (Deutscher Bundestag 2017b), which aims at “ending the discrimination of Jewish immigrants from the former Soviet Union in terms of pension law” (Beck 2017). Any pension claims Jewish immigrants may have obtained in their countries of origin are not taken into account for the calculation of their pensions in Germany. At the same time, there are no social security agreements with Russia or most other successor states of the Soviet Union (Deutscher Bundestag 2017b: 4). As a result, immigrants often have to rely on social security benefits (Bündnis 90/Die Grünen 2017a). Alliance 90/The Greens pointed out that this amounted to unequal treatment in comparison to the provisions applying to ethnic German repatriates and citizens of the former German Democratic Republic who came to Germany before 1989 (Deutscher Bundestag 2017b: 1; Bündnis 90/Die Grünen 2017a; Krauss 2017). Since the legislative period ended in September 2017, the bill lapsed (principle of discontinuity).

New Federal Government Commissioner for Matters Related to Ethnic German Resettlers and National Minorities

On 1 November 2017, Günter Krings, Parliamentary State Secretary at the Federal Ministry of the Interior, Building and Community, took over as Federal Government Commissioner for Matters Related to Ethnic German Resettlers and National Minorities. His predecessor was Hartmut Koschyk, who had been in office since 8 January 2014 (BMI 2017c).

3.5 Nationality and naturalisation

3.5.1 Background and general context

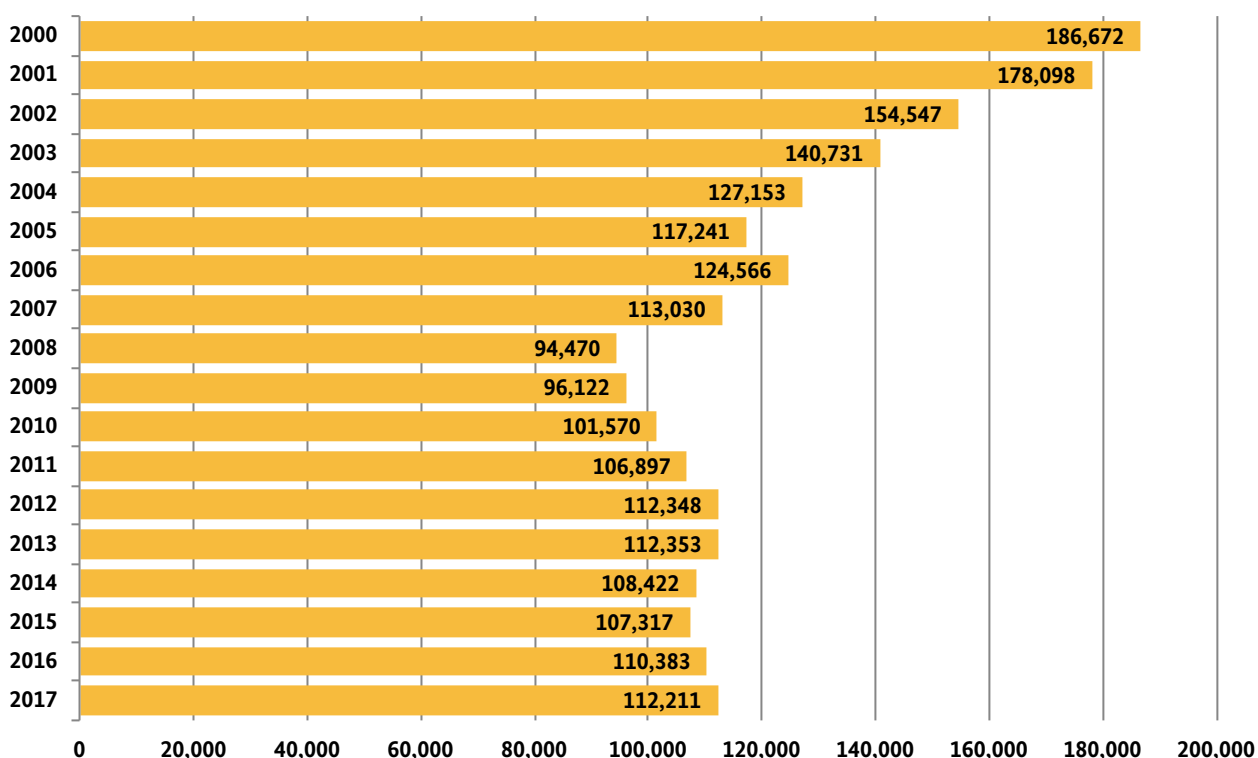
On 1 January 2000, the provisions governing the right of German citizenship were extended by the principle of *ius soli* (right of the soil); before, German citizenship was governed by the principle of *ius sanguinis* (right of blood). Since then, children born in Germany whose parents are both foreign nationals receive German citizenship at birth if at least one parent has been legally and consistently residing in Germany for eight years and has a permanent right of residence.

Foreign nationals who have been lawfully residing in Germany for several years can obtain German citizenship through naturalisation. Several conditions must be fulfilled in order to be entitled to naturalisation, including a right of residence which at least offers the prospect of a permanent residence and eight years of ordinary and legal residence in Germany (seven years for successful participants of integration courses, six years for persons with a

knowledge of German at level B2 or higher), a self-secured means of subsistence (exception: the recourse to benefits in accordance with Book Two or Book Twelve of the Social Code is due to conditions beyond the person's control), as well as no criminal convictions (Section 10 subs. 1 of the Nationality Act). Naturalisation also requires a sufficient knowledge of German (level B1 CEFR). Since 1 September 2008, those applying for naturalisation must also demonstrate knowledge of the German legal and social system and living conditions in Germany by taking a national standardised naturalisation test (Section 10 subs. 1 no. 7 of the Nationality Act). Those with a German school leaving certificate are exempt from this requirement (BMI 2015a: 15).

Under the principle of avoiding multiple nationalities, naturalised Germans will in general need to give up their prior nationality (Section 10 subs. 1 first sentence no. 4 of the Nationality Act), even though there are exceptions, in particular if the foreigner is unable to give up his or her previous citizenship, or if doing so would entail particularly difficult conditions (Section 12 of the Nationality Act). Persons entitled to asylum, persons granted refugee status as well as EU and Swiss citizens may retain their former nationality (Section 12 sub. 2 of the Nationality Act).

Figure 1: Naturalisations in Germany (2000 – 2017)



Source: StBA 2017c, 2018b; EMN/BAMF 2017: 32

3.5.2 National developments

Statistics

In 2017, 112,211 foreign citizens were naturalised. This is a year-on-year increase by 1,828 (2016: 110,383; StBA 2018b). Figure 1 shows the trend in naturalisations between 2000 and 2017.

Out of this total of 112,211 naturalisations in 2017, 39,035 were naturalisations of citizens of European countries (EU or EEA member states or Switzerland) and 14,984 naturalisations of Turkish citizens. The most important third countries of origin were Kosovo (3,909 naturalisations), Iraq (3,480), Ukraine (2,400), Iran (2,689), Syria (2,479), Afghanistan (2,400), Morocco (2,390), the Russian Federation (2,123), Bosnia and Herzegovina (2,089) and Vietnam (2,018) (StBA 2018b: 18, 21, 34).

The so-called maximised naturalisation rate calculated by the Federal Statistical Office, which describes the ratio between naturalisations and the total number of foreign citizens residing Germany for ten years or more at the beginning of the relevant reporting year, was 2.22% at the beginning of 2017. It was thus slightly higher than one year earlier (2016: 2.18%; StBA 2018b: 126, 2017c: 16).

3.6 Visa policy

3.6.1 Background and general context

In general, third-country nationals need a visa if they want to enter and stay in Germany. Short-term visa ('Schengen visa'), which are valid for stays of up to 90 days per 180-day-period, and transit visa are subject to EU legislative authority. The EU Visa Code (Regulation (EC) 810/2009) contains uniform rules for all Schengen member states³⁵. The list of countries whose nationals do not need a visa for short stays in the Schengen area is also prepared at the EU level.³⁶ Third-country nationals who plan to stay

in Germany for more than three months can apply for a national visa (D-type visa).

Schengen visa

Schengen visa entitle their holder to stay in the Schengen area for up to 90 days during a 180-day period. They are issued by the Schengen member state which is the only or main destination or via which the holder enters the Schengen area (AA, n.d.). They will in general have to apply for a visa to the responsible diplomatic mission before they travel to Germany. A Schengen visa does not entitle its holder to an economic activity during his or her stay. The diplomatic mission abroad will decide on the visa application at its own discretion; "the applicant is not entitled to a Schengen visa" (AA, n.d.). If a German diplomatic mission is to grant a visa, the following preconditions will need to be met: the "purpose of the journey to Germany must be plausible and understandable", the applicant must "finance the cost of living in Germany and the cost of travel by their own means", the "visa holder must be willing to leave the Schengen area before the visa expires", and the applicant must "present a travel medical insurance worth at least EUR 30,000 which is valid for the Schengen area as a whole and for the intended period of stay" (AA, n.d.; Article 32 para 1 of the EU Visa Code). The financial preconditions can be met by presenting a "formal undertaking by a third person pursuant to Sections 66 to 68 of the Residence Act" (AA, n.d.). Moreover, the applicant must not present a threat to public policy, internal security or public health (Article 32 para 1 lit. a) vi) of the EU Visa Code).

The Visa Information System (VIS) is a database accessible to all diplomatic missions of the Schengen member states and the border control posts at the external borders of the EU. It contains fingerprints, passport photographs and other data from the visa application (KOM 2018a).

National visa

Third-country nationals who want to work or study in Germany or stay in Germany for a longer period for another purpose need a national visa. They will "in general have to apply for a visa to the responsible diplomatic mission before they travel to Germany. As a rule, approval by the appropriate foreigners

³⁵ The Schengen area includes the EU member states (with the exception of the United Kingdom, Ireland and Cyprus) as well as Iceland, Liechtenstein, Norway and Switzerland. Bulgaria, Croatia and Romania are candidates for inclusion in the Schengen area.

³⁶ Please see <https://www.auswaertiges-amt.de/de/einreiseundaufenthalt/staatenlistevisumpflicht/207820> for

an updated list of the visa-exempt states (11 April 2018).

authority in Germany is required” (AA, n.d.). The preconditions for a national visa depend on the preconditions for the residence title for the relevant purpose (residence or settlement permit, EU Blue Card, ICT card, or EU long-term residence permit; Hailbronner 2017a: 73). Once the third-country national has entered the country, he or she may apply to the foreigners authority for the necessary residence title. Citizens of Australia, Israel, Japan, Canada, New Zealand, the Republic of Korea and the United States of America can enter Germany without a visa and apply directly to the foreigners authority for the necessary residence title (AA, n.d.). Moreover, national visa holders may move freely within the Schengen area for 90 days within any 180-day period (AA, n.d.).

3.6.2 Developments referring to the EU

Visa liberalisation for Georgia and Ukraine

On 27 March 2017, the visa exemption for Georgian nationals entered into force (Regulation (EU) 2017/372)³⁷. It applies to holders of biometric passports. The European Commission already proposed lifting the visa requirement for Georgia back in March 2016, since the country met all requirements at that time (KOM 2018b). However, the EU Council postponed the decision (Euractiv 2016). An agreement on the revised suspension mechanism (see below) finally allowed the Council and the Parliament to agree on visa liberalisation (Rat der EU 2016).

Since 11 June, Ukrainian citizens who hold a biometric passport may also enter the Schengen area without a visa. The European Commission amended the EU Visa Regulation (Regulation (EC) 539/2001) accordingly (Regulation (EU) 2017/850)³⁸ (Rat der EU 2017a).

Revision of the suspension mechanism

A suspension mechanism for Schengen visa was already introduced in 2013 (Article 1A of Regulation (EC) 539/2001)³⁹. The revision of the suspension mechanism entered into force on 28 March 2017 (BMI, n.d.). The mechanism allows to “reintroduce the visa requirement for visa-exempt third countries, initially for certain groups of persons and for a limited period of time, if the migration and/or security situation deteriorates with regard to the nationals of a visa-exempt third country” (BMI, n.d.). This revision was related to granting visa requirement exemptions to other third countries (see above).

Under the new provisions, the mechanism can be triggered not only by the member states themselves, but also by the European Commission (KOM 2017a). It may be triggered if irregular migration (including refusals of entry at the border) or the number of asylum applications with a low protection ratio rise by more than 50%, if the third countries reduce their cooperation in the area of readmission and if the risks to public order or domestic security rise significantly (KOM 2017a). In addition, a “monitoring component was included in order to secure compliance with the criteria for the visa liberalisation” (BMI, n.d.).

Non-compliance with these criteria may therefore be a reason for a suspension of the visa exemption. Compliance is monitored by the European Commission, which will report at least once a year to the European Parliament and the EU Council on this issue during the first seven years after the visa liberalisation (KOM 2017a).

On 20 December 2017, the European Commission released its first report on the western Balkan countries exempt from the visa requirement⁴⁰ as well as on the Republic of Moldova, Georgia and Ukraine (KOM 2017b). Therein, the Commission states that all states still fulfil the criteria for visa liberalisation. Furthermore, the report identifies measures which should be implemented by the single states in order to continue to meet the criteria. Amongst others, the Commission recommends measures countering irregular migration and enhanced cooperation in

37 Regulation (EU) 2017/372 of the European Parliament and of the Council of 1 March 2017 amending Regulation (EC) 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Georgia).

38 Regulation (EU) 2017/850 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (Ukraine).

39 Council Regulation (EC) 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. Amended by Regulation (EU) 2017/371.

40 Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Montenegro and Serbia.

relation to return, the fight against organised crime and corruption as well as the protection of vulnerable groups in society (KOM 2017b).

Judgment by the European Court of Justice on visa on humanitarian grounds

In a judgment given on 7 March 2017⁴¹ the European Court of Justice dealt with the question of the whether the EU Visa Code is applicable if third-country nationals apply for a visa in order to apply for international protection in an EU member state. The applicants were a Syrian family who lived in Aleppo and submitted applications for visas with limited territorial validity to the Belgian embassy in Beirut in October 2016. In derogation of the usual entry preconditions, the member states may issue such visa in exceptional cases, for example on humanitarian grounds (Article 25 para 1 lit. a of the EU Visa Code). They are valid only for the territory of the issuing member state (Article 25 para 2 first sentence of the EU Visa Code).

Paolo Mengozzi, Advocate General to the European Court of Justice, argued in his opinion that Belgium was obliged to respect the fundamental rights of the European Union when deciding on the visa application and thus required to issue a visa if denial of that visa amounted to a violation of the applicants' fundamental rights, for example because they were subject to torture or inhuman or degrading treatment (see Article 4 of the Charter of Fundamental Rights of the European Union; Mengozzi 2017). The Advocate General believed this to be the case, seeing that the family lived in Aleppo and the father claimed to have been tortured before. However, the European Court of Justice decided that the EU Visa Code did not apply in this case and the Belgian embassy was therefore not obliged to issue a visa. It argued that the visa was sought for the purpose of applying for asylum, which implied that the family wanted to stay in Belgium for more than 90 days. The EU Visa Code, however, was intended only for short-term stays. For this reason, applications for visa for longer stays were exclusively governed by national law.

41 C-638/16 PPU.

4 International protection and asylum

4.1 National asylum system

4.1.1 Background and general context

Asylum seekers need to contact a government authority (such as a border, security or foreigners authority, a reception facility or an arrival centre) as soon as they enter Germany or immediately afterwards if they want to request asylum. They will be registered, and their data (including a photograph and fingerprints) will be stored in a central database. Afterwards, the asylum seekers will be sent on to one of the 16 Länder pursuant to a pre-set quota ('Königstein key'). The Länder are then responsible for accommodating the asylum seekers in 'reception centres'. Depending on the asylum seeker's country of origin, they will stay at the reception centres for up to six months or until the decision on their asylum application is taken (for example in the case of asylum applicants from safe countries of origin).

If the asylum application is submitted at an arrival centre or at a branch office of the Federal Office for Migration and Refugees, the asylum seeker will be issued with a proof of arrival after his or her registration. Otherwise, he or she will receive a certificate directing them to the nearest reception facility. "As the first official document, the proof of arrival serves to document the entitlement to reside in Germany. And what is equally important is that it constitutes an entitlement to draw state benefits, such as accommodation, medical treatment and food" (BAMF 2016a: 8). During their stay at a reception facility, asylum seekers will receive basic support in kind and a monthly sum for their everyday personal needs pursuant to the Act on Benefits for Asylum Seekers.

Following the request for asylum, asylum seekers must submit their application for asylum in person at a branch office or arrival centre of the Federal Office for Migration and Refugees. Before the Federal Office processes an asylum application, it examines whether Germany is responsible according to the criteria set out in the Dublin III Regulation ((EU) 604/2013). "The purpose of the Dublin Regulation is for the content of each asylum application

which is lodged in the Dublin area to only be examined on the merits by one state. This area includes the Member States of the European Union, Norway, Iceland, Switzerland and Liechtenstein" (BAMF 2016a: 13). If there are indications that another Member State is responsible, "a request to take charge or take back is addressed to it. If the other Member State regards this request as justified, it shall agree to it within the response period" (BAMF 2017d: 24). The transfer of the applicant must take place within six months. Otherwise, the responsibility for the procedure will be transferred to the member state which made the take-charge request. The transfer period may be extended to twelve months (if the asylum seeker is detained) or 18 months (if the asylum seeker has absconded or cannot be detected). If protection has already been granted under the law on asylum in one Dublin state, no further examination of the asylum application is possible in Germany" (BAMF 2016a: 13).

The non-public, personal interview is at the heart of the asylum procedure. During this interview, applicants can explain the reasons for their flight to the Federal Office's decision-makers. If applicants do not attend and do not state why they are unable to attend, their application may be rejected or the proceedings discontinued. "The Federal Office decides on the asylum application on the basis of the personal interview and of a detailed examination of documents and items of evidence. The decision rests on the fate of the individual applicant. It is reasoned in writing, and where appropriate is served on the person concerned, the applicant or the legal representative, as well as on the competent immigration authorities. [...] The Federal Office examines each asylum application on the basis of the Asylum Act as to whether one of the forms of protection – entitlement to asylum⁴², refugee protection pursuant to the Geneva Convention, subsidiary protection⁴³ or a

42 The German constitution grants a right of asylum to victims of political persecution (Article 16a of the Basic Law). This applies if a person resides outside his or her country of origin owing to well-founded fear of persecution on account of his or her race, religion, nationality, political opinion or membership of a particular social group (Section 3 subs. 1 nos. 1 and 2 of the Asylum Act).

43 A person shall be granted subsidiary protection – which is a second type of international protection, next to refugee protection, within the meaning of Directive 2011/95/EU – if he

Figure 2: Four forms of protection



Quelle: BAMF 2016a: 16

national ban on removal – applies. Only when none of the forms of protection can be considered is the asylum application [fully] rejected” (BAMF 2016a: 16; see Figure 2).

If applicants are granted a protection status, they will be issued with a residence permit for one to three years, depending on the type of protection. This permit may be extended or exchanged against a permanent residence permit afterwards. The first three types of protection include an unrestricted permission to gainful employment. Persons for whom a removal ban was issued may work, but only with the approval of the foreigners authority. Third-country nationals may not work during their obligatory stay at a reception facility (regardless of the length of this stay) or during the first three months of the asylum procedure.

In addition, a stay in the Federal Republic may be granted for international, humanitarian or political reasons by admission from abroad or in Germany (Sections 22 – 25b of the Residence Act). This includes humanitarian admission programmes and the resettlement procedure described in more detail in Chapter 4.3.

or she “has shown substantial grounds for believing that he would face a real risk of suffering serious harm in his country of origin (Section 4 subs. 1 of the Asylum Act). Serious harm consists of death penalty or execution, torture or inhuman or degrading treatment or punishment, or serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. A threat of serious harm within the meaning of Section 4 subs. 1 of the Asylum Act may emanate from the state, from quasi-state agents or from non-state agents (Section 3c of the Asylum Act in conjunction with Section 4 subs. 3 first sentence of the Asylum Act)” (BMI/BAMF 2016: 86).

4.1.2 National developments

4.1.2.1 Statistics

Development in the number of asylum applications

In 2017, the Federal Office for Migration and Refugees received 198,317 first-time asylum applications, i.e. 524,053 less than in 2016 (-72.5 %). The number of asylum applicants fell for the first time after increasing for nine years in a row and returned roughly to the level of 2014 (173,072 first-time applications).

Table 1 shows that two European countries, the Russian Federation and Turkey, were among the main countries of origin. Other important countries of origin were Syria, Iraq, Afghanistan, Eritrea, Iran, Nigeria and Somalia. The number of applications fell markedly for nine out of ten main countries of origin. In absolute terms, the figures dropped most for Syria (-217,276 first-time applications), Afghanistan (-110,589), Iraq (-74,186) and Iran (-17,818). Only the number of first-time applications from Turkish nationals grew significantly, by about 49% in year-on-year terms.

Overall protection rate

The overall protection rate⁴⁴ declined from 62.4% to 43.4% in comparison to the preceding year.

⁴⁴ The total protection ratio covers all positive decisions, according to which applicants were recognised as asylum seekers pursuant to Article 16a para 1 of the Basic Law, refugees pursuant to Section 3 subs. 1 of the Asylum Act or beneficiaries of subsidiary protection pursuant to Section 4 subs. 1 of

Table 1: First-time asylum applications and main countries of origin (2016 and 2017)

	2016		2017		First-time applications for asylum, changes to the previous year in %	First-time applications for asylum, changes to the previous year, absolute figures
	First-time applications for asylum	Total applications for asylum	First-time applications for asylum	Total applications for asylum		
Total	722,370	745,545	198,317	222,683	-72.5%	-524,053
Syria	266,250	268,866	48,974	50,422	-81.6%	-217,276
Iraq	96,116	97,162	21,930	23,605	-77.2%	-74,186
Afghanistan	127,012	127,892	16,423	18,282	-87.1%	-110,589
Eritrea	18,854	19,103	10,226	10,582	-45.8%	-8,628
Iran, Islamic Republic of	26,426	26,872	8,608	9,186	-67.4%	-17,818
Turkey	5,383	5,742	8,027	8,483	+49.1%	+2,644
Nigeria	12,709	12,916	7,811	8,261	-38.5%	-4,898
Somalia	9,851	10,232	6,836	7,561	-30.1%	-3,015
Russian Federation	10,985	12,234	4,884	6,227	-55.5%	-6,101
Unclear	14,659	14,922	5,554	6,005	-62.1%	-9,105

Source: BAMF. The order is based on the 10 countries of origin with the highest figures in 2017

In 2017, a total of 603,428 decisions on first-time and subsequent applications were taken (2016: 695,733). 123,909 persons were either eligible for asylum under Article 16a of the Basic Law or recognised as refugees under the Geneva Convention relating to the status of refugees (2016: 256,136). Subsidiary protection was granted to 98,074 persons (153,700 in 2016), and national removal bans were established in 39,659 cases (24,084 in 2016). 232,307 applications were rejected (38.5% of all decisions) and 109,479 decisions were taken on formal grounds⁴⁵ (18.1%) (BAMF 2018d).

The protection ratios in 2017 were highest for applicants from Syria (91.5%), Eritrea (82.9%) and Somalia (60.8%). Across the ten main countries of origin, a subsidiary protection status was granted in 21.9% of the cases. The rate dropped to 16.3% for all decisions taken (BAMF 2018d: 35 et seq.).

Legal proceedings and court decisions

In 2017, 49.8% of the decisions on first-time and subsequent asylum applications were afterwards challenged in court. This total includes court actions brought against a full rejection (73.4% of all rejections were challenged in court) and actions brought against partial rejections (for example, 38.6% of all positive subsidiary protection decisions were challenged with the aim of being granted a right to asylum or being recognised as a refugee; BAMF 2018d: 44).

The courts of first instance took a total of 146,168 decisions on asylum cases. In 32,486 cases (22.2%) they granted a protection status, in 32.3% of all cases the challenges were refused and in 45.5% of all cases a decision was taken on formal grounds (such as a combination of actions brought by individual family members in one procedure or a withdrawal of an action). As of 31 December 2017, a total of 372,443 cases were pending before administrative courts, higher administrative courts or the Federal Administrative Court (BAMF 2018d: 46 et seq.).

the Asylum Act or in which national deportation bans were established pursuant to Section 60 subs. 5 or 7 of the Residence Act.

45 Decisions on formal grounds are taken without a detailed examination of the applicant's case, for example because the Federal Office for Migration and Refugees is not responsible for the asylum procedure under the Dublin Regulation, because a subsequent procedure is rejected or because the procedure is stopped after the applicant has withdrawn the application (BAMF 2018d: 34).

4.1.2.2 Changes to the law, court decisions and other measures referring to asylum law

At the end of 2016 and during 2017, several laws and amendments entered into force which had an

impact on the accommodation, the integration and the establishment of identity of asylum seekers and beneficiaries of international protection and on their entitlement to benefits.

Revocation of protection status if beneficiaries of protection travel to their country of origin

With the entry into force of the ‘Act to Improve the Enforcement of the Obligation to Leave the Country’⁴⁶ on 29 July 2017, subsection 1c was added to Section 8 of the Asylum Act. It obliges employment agencies, border control authorities, foreigners authorities and German diplomatic missions to notify the Federal Office for Migration and Refugees of any travels of beneficiaries of international protection to their countries of origin. The Federal Office will then examine whether the preconditions for revoking or withdrawing the protection status are met (Section 8 subs. 1c of the Asylum Act).

Extension of the stay at reception facilities

After the ‘Act to Improve the Enforcement of the Obligation to Leave the Country’ entered into force on 29 July 2017, the Länder may oblige asylum applicants to stay at the responsible reception facility until their asylum procedure is complete or the removal is carried out, but for a maximum of 24 months. The prerequisite is that the Federal Office for Migration and Refugees may in the short term reject the asylum application as manifestly unfounded or inadmissible (Section 47 subs. 1b of the Asylum Act). Before, only applicants from safe countries of origin could be obliged to stay at the reception facilities for a longer period of time (Section 47 subs. 1a of the Asylum Act). In all other cases, the period during which applicants are required to live at the responsible reception facility is limited to six months at most (Section 47 subs. 1 of the Asylum Act).

Residence obligation for beneficiaries of protection

The Integration Act, which entered into force on 6 August 2016, includes a residence rule. The details and the application of this rule are at the discretion of the Länder. Section 12a subs. 1 of the Residence Act obliges persons entitled to asylum, recognised refugees, beneficiaries of subsidiary protection and

certain groups of persons who have been granted an initial temporary residence permit on humanitarian grounds to stay for three years in that Land which was responsible for their asylum procedure or their admission. This period begins at the date of the recognition or issuance of the temporary residence permit.

Pursuant to Section 12a subs. 2 and 3 of the Residence Act, the authorities may oblige these groups of persons within six months after the recognition or issuance of the temporary residence permit to take up residence at a specific place (so-called positive residence rule). Moreover, the authorities may also oblige these persons not to take up residence in a specific place “in order to prevent social exclusion”, “in particular if it is to be expected that they will not use German as their main language of communication at that place” (so-called negative residence rule; Section 12a subs. 4 of the Residence Act). This rule does not apply if the person in question him- or herself, his or her spouse, registered partner or minor child takes up or has taken up employment, at least 15 hours per week with full social security coverage, on account of which that person has a certain income (2017: EUR 712), or that person takes up or has taken up vocational training or is pursuing his or her studies or is in a training relationship (Section 12a subs. 1 second sentence of the Residence Act).

Hesse introduced a positive residence rule on 1 September 2017. It affects all those beneficiaries of protection who have been granted a residence permit on humanitarian grounds in Hesse since 1 March 2017 (HMdIS 2017). Lower Saxony, for its part, introduced a negative residence rule for three cities, from 9 October 2017 for Salzgitter (MI Niedersachsen 2017b: 2) and from 14 November 2017 for Delmenhorst and Wilhelmshaven (MI Niedersachsen 2017c: 2). A decree obliged the foreigners authorities to include the ban on moving to either of these three cities in the residence permits as a binding ancillary clause.

As of end-2017, seven Länder used the residence rule: Baden-Württemberg, Bavaria, Hesse, Lower Saxony, North Rhine-Westphalia, Saarland and Saxony-Anhalt. Apart from Lower Saxony, all of them used a positive residence rule (see Renner 2018: 11). Saxony discussed the introduction of a residence rule in its steering committee on asylum (SMS 2017: 1).

46 BGBl. 2017 Part I No. 52: 2780.

Obligatory participation in integration courses

Since 1 January 2017, asylum applicants with a good prospect to remain and persons with a tolerated stay status whose temporary presence in the Federal territory is required on urgent humanitarian or personal grounds or for reasons of substantial public interest may be obliged to participate in integration courses if they receive benefits under the Act on Benefits for Asylum Seekers and the responsible authority asks them to participate in such a course (Section 44a subs. 1 no. 4 of the Residence Act in conjunction with Sections 44 subs. 4 second sentence nos. 1 – 2 and 60a subs. 2 third sentence of the Residence Act). If persons who are obliged to participate do not attend the integration course, their benefits may be reduced (Section 5b subs. 2 of the Act on Benefits for Asylum Seekers). These are minor amendments under the Integration Act⁴⁷, which entered into force after 6 August 2016, the date at which the bulk of the new Act took effect.

Initial orientation courses for asylum seekers with uncertain prospects to remain⁴⁸

In its Meseberg Statement on Integration issued on 25 May 2016, the Federal Government already announced specific funding measures for asylum seekers whose prospects to remain are unclear. They apply to asylum seekers who do not have good prospects to remain and do not come from a safe country of origin. Initial orientation courses for this group were tested in a pilot project between August 2016 and June 2017. “During this period of time, three organisations – the German Employee Academy, Johanniter International Assistance (Johanniter-Unfall-Hilfe) and the Order of Malta (Malteser International) delivered 135 courses for 4,272 attendees nationwide” (BAMF 2017e). The courses were financed using project funds of the Federal Office for Migration and Refugees. From June 2017, the courses were offered by 50 organisations nationwide. EUR 40 million were earmarked for the courses in 2017. The funds were distributed among the Länder based on the Königstein key.

The initial orientation courses delivered for between 12 and 20 attendees comprise 300 lesson units, with each lesson lasting 45 minutes. Eleven modules cover the following subject areas: everyday

life in Germany, work, shopping, health and health-care, preschool/school, using the media in Germany, finding one’s way around/transport/mobility, customs and habits in Germany/local particularities, speaking about oneself and others/social contacts, values and living side-by-side as well as housing (Bayerisches Staatsministerium für Arbeit und Soziales, Familie und Integration/BAMF 2016: 6; BAMF 2017 et seq.: 3).

An evaluation of the pilot project arrived at the conclusion that the programme “meets an acute demand for low-threshold orientation courses shortly after arrival. The features that distinguish initial orientation courses from integration courses are low-threshold access, course flexibility, the focus on everyday language and enabling attendees to acquire a basic command of the German language as well as the focus on issues relevant for everyday life”. By contrast, it said that obstacles and challenges arose from “tight time constraints, fluctuating group compositions and sizes and, in some places, a lack of childcare facilities” (Johanniter-Unfall-Hilfe 2017: 21).

‘Refugee Integration Measures’ to create 100,000 work opportunities

When the Integration Act entered into force on 6 August 2016, the plan was originally to create ‘Refugee Integration Measures’ (RIM) offering up to 100,000 work opportunities for asylum seekers each year (Section 5a of the Act on Benefits for Asylum Seekers). It was possible to approve two types of work opportunities, namely “internal” and “external” RIM. Internal integration measures involve activities aimed at maintaining and running the facility providing accommodation for the relevant persons themselves. External work opportunities refer to “jobs created by state, local or non-profit organisations provided the work to be performed cannot be carried out at all, not to the required extent or not at that point in time” (Section 5 subs. 1 second sentence of the Act on Benefits for Asylum Seekers). Participants were paid an expenses allowance of 80 eurocents per hour. These jobs were referred to as ‘80 eurocent jobs’ similar to the so-called ‘one euro jobs’ within the framework of unemployment benefits II (‘Hartz IV’). Participation could be made compulsory for asylum seekers and those who failed to participate were no longer eligible for social benefits under the Act on Benefits for Asylum Seekers (Section 5a subs. 3 of the Act on Benefits for Asylum Seekers).

⁴⁷ BGBl. 2016 Part I No. 39: 1939.

⁴⁸ The explanations in this and the following sub-chapter are based on Grote (2018).

The programme was limited until 31 December 2020. Funding of €300 million was available each year when the measure was launched. However, when the Directive for the Labour Market Programme was amended on 12 April 2017, the target of 100,000 work opportunities per year was abandoned as the anticipated demand failed to materialise. The budget was adjusted accordingly, meaning that funding of up to €60 million per year will be available for the years between 2018 and 2020 (Öchsner 2017). The Federal Labour Office is responsible for implementing the programme.

The RIM jobs reaped criticism from a number of parties. Representatives of economic research institutions, the opposition party Alliance 90/The Greens and the German County Association (Deutscher Landkreistag) emphasised the importance of integration into the regular labour market and criticised the creation of parallel structures to existing work opportunities for asylum seekers (EMN/BAMF 2017: 41; FAZ 2017; Deutscher Landkreistag 2016). The Federal Workers' Welfare Association (AWO-Bundesverband e. V.) welcomed the creation of additional work opportunities, but criticised the fact that they were compulsory (AWO 2016a: 6).

Federal participation in the costs of integration

On 7 December 2016, the 'Act on Federal Participation in the Costs of Integration and on Further Relief for the Länder and Municipalities'⁴⁹ entered into force. It aims to provide further financial relief to the Länder and municipalities:

"Similar to the procedure for funding for education and participation, the Federal Government will fully fund all expenses for the accommodation (including heating) of persons entitled to asylum and beneficiaries of protection as set out in Book Two of the Social Code (SGB II) for the years from 2016 to 2018. For this purpose, the participation of the Federal Government in the expenses for accommodation (including heating) pursuant to Book Two of the Social Code will be raised and the percentage increase for 2016 will be spelled out in the law. In the years 2017 - 2019, the amount and distribution to the individual Länder will be adjusted annually depending on the development of the expenses of the preceding year. This shall take the form of a statutory

instrument which will be approved by the Bundesrat" (BMF 2016a: 1).

In addition, the Federal Government will support the Länder with an annual lump-sum payment of EUR two billion between 2016 and 2018 and provide them with about EUR 500 million for residential construction in 2017 and 2018 (BMF 2016a: 1). Moreover, there will be financial relief worth another EUR five billion from 2018 stemming from amendments to the Länder and municipalities' share in VAT revenues and to the Federal Government's participation in accommodation expenses (incl. heating) for beneficiaries of protection (BMF 2016a: 1).

Increase of regular benefits (benefits in kind pursuant to Section 2 of the Act on Benefits for Asylum Seekers)

On 3 November 2017, the Bundesrat approved the increase in regular benefits⁵⁰ pursuant to Book Twelve of the Social Code and basic unemployment benefits (unemployment benefits II/Hartz IV), which the Bundestag had already adopted on 6 September. This applies accordingly to asylum applicants and beneficiaries of international protection who have been resident in Germany for 15 months without a significant interruption and who have not abused the law to influence their time of stay (Section 2 subs. 1 of the Act on Benefits for Asylum Seekers). The new benefits apply since 1 January 2018. From that date, singles and single parents receive EUR 416 per months (+ EUR 7), whereas couples receive EUR 374 per capita (+ EUR 6 per capita). Juveniles aged 14 - 18 receive EUR 316 (+ EUR 5) and children aged below 6 EUR 240 (+ EUR 3) (BMAS 2017a). Asylum seekers and beneficiaries of protection who live in a reception facility of the Länder and have not been resident in Germany for 15 months yet receive basic benefits pursuant to Section 3 subs. 1 of the Act on Benefits for Asylum Seekers. These benefits are lower than the social security or unemployment II benefits and were not affected by the hike in the regular benefits (for basic and analogous benefits see: GGUA/Projekt Q/Der Paritätische 2018: 2). Benefits for necessities, such as food, accommodation, heating, clothes, healthcare, are provided in kind. Depending on the provisions of the individual Länder, benefits for everyday personal needs are also

49 BGBl. 2016 Part I No. 57: 2755.

50 Regulation on determining the percentage for the extrapolation of the regular needs categories pursuant to Sections 28a and 134 of the Twelfth Book of the German Social Code and on supplementing the appendix to Section 28 of the Twelfth Book of the German Social Code for 2018 (RBSFV 2018).

provided in kind or by coupons (Section 3 subs. 1 of the Act on Benefits for Asylum Seekers).

Obligation of youth welfare offices to submit asylum applications on behalf of unaccompanied minors

The ‘Act to Improve the Enforcement of the Obligation to Leave the Country’, which took effect on 29 July 2017, also obliges youth welfare offices to immediately submit an asylum application on behalf of unaccompanied minors if there are good reasons to assume that the child or youth needs international protection (Section 42 subs. 2 of the Eighth Book of the Social Code; see Chapter 5.1).

Family reunification with beneficiaries of subsidiary protection

The restrictions on family reunification with beneficiaries of subsidiary protection, which entered into force on 17 March 2016 under the Asylum Package II and had been limited until 16 March 2018⁵¹, were a subject of important political discussions in 2017, not least during the election campaign and the coalition negotiations after the Bundestag elections at the end of 2017 (see Chapter 2.2). Moreover, both the AfD and The Left presented legislative proposals on family reunification with beneficiaries of subsidiary protection in December 2017. The AfD’s ‘Draft of a Law Amending the Residence Act’ of 6 December 2017 called for a “complete abolishment of the legal right to family reunification with beneficiaries of subsidiary protection” or alternatively a “continuation of the status quo” (Deutscher Bundestag 2017c: 2). In contrast, the parliamentary group of The Left presented a draft for a ‘Law Amending the Residence Act – Family Reunification with Beneficiaries of Subsidiary Protection’ on 12 December 2017 which said that the “suspension should be lifted with immediate effect for constitutional, humanitarian and integration policy reasons” (Deutscher Bundestag 2017d: 2). The other parties also announced draft bills on family reunification, which were, however, not presented during the period this report covers, i.e. until the end of 2017.

51 “Family reunification will be suspended until 16 March 2018 for all those who were granted a residence permit for subsidiary protection purposes after 17 March 2016 (Section 104 subs. 13 of the Residence Act). This will, as a rule, also apply to parents who want to join their unaccompanied minor children; during the two-year suspension, this will only be possible in cases of special hardship under international law provisions or for urgent humanitarian reasons” (EMN/BAMF 2017: 26).

Extension of Family Assistance Programmes (FAP)

Since June 2016, the Foreign Office has been financing a Family Assistance Programme (FAP) managed by the International Organisation for Migration (IOM) which is addressed at Syrian families who have filed or plan to file an application for family reunification in Germany. In 2016, so-called FAP service centres were established in Turkey (Istanbul and Gaziantep) and Lebanon (Beirut). On 28 February 2017, another FAP service centre was opened at Erbil in the Kurdish area in northern Iraq (IOM 2017a), and on 13 March 2017, a service centre was established at Chtoura in Lebanon (IOM 2017b). These service centres were established because “numerous Syrian families are not well informed or prepared when they arrive for their long-awaited application filing appointment. Many applications are incomplete and lacking key documents. This results in unwelcome delays. IOM offers comprehensive support to ensure that the application documentation is complete ahead of the appointment” (IOM 2016a: 2).

Provision for cases of particular hardship in the field of family reunification with beneficiaries of subsidiary protection

The provisions concerning the suspension of family reunification with beneficiaries of subsidiary protection state clearly that the possibility of allowing family members to come to Germany on humanitarian grounds remains unaffected. Family members may be allowed entry despite the general suspension of family reunification with beneficiaries of subsidiary protection in cases of particular hardship (see Deutscher Bundestag 2017e: 55). A decision by the Berlin administrative court of 7 November 2017 (VG 36 K 92.17V) reversed the authorities’ decision to reject an application for family reunification and obliged the authorities “to assume a case of hardship pursuant to the humanitarian provisions set out in Section 22 of the Residence Act” (Informationsverbund Asyl und Migration 2017a). The court argued that the preconditions for assuming a case of hardship were met in the case of an unaccompanied 16-year-old beneficiary of subsidiary protection from Syria. “Psychological experts have found that the unaccompanied minor living in Germany suffered from post-traumatic stress disorder and a depression. For this reason, the administrative court believes that family reunification in Germany is necessary for urgent humanitarian reasons and reasons of international law pursuant to Section 22 of the Residence Act. In this case, the scope of discretion

amounts to zero, as the interests of the 16-year-old are considerably and acutely endangered” (Informationsverbund Asyl und Migration 2017b). Between the beginning of 2017 and 6 October 2017, a total of 19 visa were granted pursuant to Section 22 of the Residence Act to persons who applied for reunification with beneficiaries of subsidiary protection. All applicants were Syrian nationals (Deutscher Bundestag 2017f: 5).

Refusal to classify additional countries as safe countries of origin

On 10 March 2017, a majority in the Bundesrat refused to approve the ‘Act on the Classification of the People’s Democratic Republic of Algeria, the Kingdom of Morocco and the Republic of Tunisia as Safe Countries of Origin’, which had already been adopted by the Bundestag on 13 May 2016 (EMN/BAMF 2017: 5).

Medical care by asylum seekers at reception facilities and in collective accommodation centres

Until 24 October 2017, asylum seekers who were trained medical doctors were allowed to provide medical care to other asylum seekers at reception facilities and in collective accommodation centres if it was impossible to provide adequate healthcare by other means (Section 90 of the Asylum Act; Act on the Introduction of Accelerated Asylum Procedures (AsylVfBeschlG)). This provision took effect on 24 October 2015 and was limited to two years.

4.1.2.3 Changes and measures in the area of refugee management

Cluster procedure

In March 2017, the cluster procedure was abolished. It foresaw that asylum applications should be sorted into four clusters depending on the country of origin. The aim was to achieve more centralisation and to manage and shorten the procedures for persons from certain countries of origin to a few weeks. Decisions on applicants from countries of origin with high protection rates (cluster A; in 2016, Syria, Eritrea or Christian and Yazidi minorities from Iraq) or low protection rates (cluster B; in 2016, secure countries of origin and others) were taken at the arrival centres. More complex procedures (cluster C

or Dublin procedures (cluster D) were sent on to the other branch offices from January or to three ‘Dublin centres’ from June 2017. Furthermore, since the summer of 2016, personal interviews for more complex procedures were carried out at the arrival centres in order to relieve the branch offices of the Federal Office for Migration and Refugees (EMN/BAMF 2017: 43).

Retroactive examination of passports in decisions taken in the simplified procedure

Since 2017, the Federal Office for Migration and Refugees has re-examined the passports of persons who have undergone the written asylum procedure (which did not include a personal interview and was conducted above all for applicants from Syria, Iraq and Eritrea; see Grote 2018: 40). From November 2014, the Federal Office had temporarily relied on this procedure for applicants from countries of origin with a particularly high protection rate. Initially, this covered applicants from Syria and Yazidi, Christian and Mandaean applicants from Iraq. From July 2015, this was extended to asylum seekers from Eritrea (BAMF 2015a). The goal was to accelerate asylum procedures by waiving the personal interview at a time when many refugees came. The personal interview was replaced by a ten-page questionnaire, which asked about details that might be relevant for granting the applicant refugee status (Section 24 subs. 4 fourth and fifth sentences of the Asylum Act in conjunction with Section 13 subs. 2 second sentence of the Asylum Act; BAMF 2014a). During the application processing, the identification procedure and a physical and technical examination of the identity documents were initially waived. From December 2015, the examination of the individual case including a personal interview was gradually re-introduced. Thomas de Maizi re, who was minister of the interior at the time, argued that the simplified procedure raised security concerns (BMI 2015b).

Early revocation examination

In May 2017, Thomas de Maizi re, who was minister of the interior at the time, asked for an early revocation examination of 80,000 - 100,000 positive asylum decisions from the years 2015 and 2016 (so-called early standard revalidation procedure). This included decisions from the temporarily conducted ‘asylum procedures in writing’ (see above) and procedures during which applicants had not provided

any identity documents. Taking into account the main applicants and their family members, a total of roughly 191,700 asylum decisions had to be reviewed. The Federal Office for Migration and Refugees established a team of 80 employees for this task (Deutscher Bundestag 2018a: 3). During the procedure, the employees ask the foreigners and security authorities for information on the relevant cases. "If the foreigners or security authorities learn that the foreigner does not come from the country of origin named during the procedure or if there are grounds to refuse asylum, the facts may be re-examined during the revocation procedure, for example during a new personal interview. Whether the facts justify a revocation or withdrawal of the asylum status will be examined and decided in each case" (Deutscher Bundestag 2018a: 3). Moreover, asylum applicants who have undergone the written procedure will be invited to an interview in order to clarify their country of origin and their identity.

The early review was triggered above all by the case of German army soldier Franco A., who had claimed to be a Syrian refugee, had been granted protection and had afterwards touched benefits (BAMF 2017g). The Federal Prosecutor's Office accused Franco A. of preparing a serious act of violence that endangers the state. The charges committed by the three accused should presumably be done "out of a right-wing extremist attitude" and "perceived by the population as a radical Islamic act of terror by a recognised refugee" (Generalbundesanwalt 2017).

Integrated identity management – new methods to establish identity

During 2017, several new methods to establish applicants' identity were introduced. The new process is called 'integrated identity management' (Tangermann 2017). The new measures include:

- the use of a language biometrics software, which helps to find indications where applicants really come from. It "analyses the audio records of asylum applicants, matches them with a language and a dialect and thus gives the responsible decision-makers of the Federal Office supplementary indications concerning the geographic origin of asylum applicants" (Tangermann 2017: 50);
- extended scope for the Federal Office to analyse mobile data carriers for information concerning their owners' identity and nationality, even without the owners' consent (Section 15a of the Asylum Act; based on the 'Act to Improve

the Enforcement of the Obligation to Leave the Country', which entered into force on 29 July 2017; the new provisions drew considerable criticism from civil-society organisations, not least due to data protection and constitutional concerns; see Tangermann 2017: 49 et seq.);

- "photo assistant system in a first stage to weed out double applications" (Deutscher Bundestag 2017g: 58), which is used since 1 September 2017; the IT system helps to compare new and stored photographs of applicants;
- an IT assistant system for 'name transliteration and analysis', which has been used by the Federal Office for Migration and Refugees from 1 September 2017. Applicants use keyboards with language-specific Arabic characters to enter their names. This requires knowledge of written Arabic and may, in combination with the language analysis, give indications about the applicants' region of origin. The name transliteration assistant will automatically convert the entries into the Latin alphabet (BMI 2017d);
- the introduction of legal rules which enable welfare authorities to identify beneficiaries by taking fingerprints and crosschecking them with the data stored in the Central Register of Foreigners under the Act Amending the Federal Act on Compensation for Victims of Violent Crime and other Provisions⁵², which entered into force on 25 July 2017. Expenses for providing the welfare authorities with the necessary software and with fingerprint scanners are borne by the Federal Government (MFFJIV RLP 2017a: 2);
- a better IT network between the asylum authorities and an expansion of the 'core database' based on the Central Register of Foreigners help to provide all those involved in the procedure more quickly with the identity data.

Establishment of three Dublin centres by the Federal Office for Migration and Refugees

In February 2017, the Federal Office for Migration and Refugees established three so-called Dublin centres at Berlin, Dortmund and Bayreuth. Afterwards, the processing of Dublin requests to other member states was shifted from the branch offices to these three Dublin centres. The branch offices have only been responsible for the EURODAC examination and the Dublin admissibility interview since. Any Dublin cases are transferred to the responsible Dublin centre.

52 BGBl. 2017 Part I No. 49: 2541.

Federal Office for Migration and Refugees - Digitisation Agenda 2020⁵³

The digitisation of the asylum procedure and the work of the Federal Office for Migration and Refugees, which started at the end of 2015 and in 2016, continued in 2017. Essentially, the Agenda consists of three stages, with Stage I standing for electronic data storage, in which all documents in the individual work steps at the Federal Office are stored electronically and can therefore be processed at the individual offices (catchphrase: “paperless public authority”; BAMF 2017h: 6). Stage II relates to digital workflows, gradually reducing manual input within the individual work processes. The data is to be made accessible, readable and usable electronically, thereby reducing the error rate of manual data entries (catchphrase: “digital end-to-end processes”; BAMF 2017h: 6). Stage III involves systematic decision-making support. This involves the automatic interpretation of data and the support for staff (automated plausibility checks of the name spelling) derived from it right up to the full automation of partial steps (catchphrase: “IT-based decisions”; BAMF 2017k: 6). All three stages also include the expansion of the digital exchange of data between the Federal Office and other actors relevant for a range of procedures (e.g. asylum seekers themselves, foreigners authorities, the Federal Labour Office, branch offices of the Federal Office for Migration and Refugees, the police, other security authorities, administrative courts, clubs and NGOs). In the summer of 2017, the Digitisation Agenda encompassed over 30 individual projects, including, for instance, an electronic overview of integration courses available and in demand (‘course tracker’), ‘intelligent interview support’, which provided decision-makers with model questions as well as case-specific information and documents during the interview and with a simplified legal assessment of the case during the decision-making process (see BAMF 2017h: 27 et seq. for more details).

Quality initiative Asylum at the Federal Office for Migration and Refugees

Existing quality management measures at the Federal Office for Migration and Refugees were strengthened further from 1 September 2017, and a multi-layered quality management concept for asylum decisions was introduced. The additional measures include the introduction of the ‘four-eyes

principle’ for all asylum decisions, an additional check of asylum decisions by the quality management department of the Federal Office for Migration and Refugees, annual internal reviews, which serve as a quality check of the asylum procedures, and extended training.

Shutdowns and refunctioning of facilities of the Federal office for Migration and Refugees

During the preceding years, the infrastructure and the number of branch offices of the Federal Office for Migration and Refugees had been considerably expanded. By end-2016, the Federal Office operated more than 140 facilities at about 80 cities. In 2017, plans and initial steps to shut down or to refunction certain branch offices were taken (see Figure 3). In 2017, a total of 26 facilities were shut down, including the office at Meßstetten at the end of 2017. On 1 February 2017, the branch office at Bayreuth became a Dublin centre.

Shutdowns and deactivation of initial reception facilities in the Länder

In 2017, numerous Länder adjusted their initial reception facilities. With the number of new arrivals declining significantly from spring 2016 and remaining relatively low in 2017, the Länder began to deactivate individual reception facilities or to put them in stand-by mode. The process continued in 2017, with dozens of initial reception facilities being shut down or tangible plans for their shutdown in 2018 being developed (see Ministerium für Inneres, ländliche Räume und Integration Schleswig-Holstein 2017a; Hessisches Ministerium für Soziales und Integration 2017).

Extension of staff capacities at the Federal Office for Migration and Refugees

In 2017, 7,400 full-time equivalents (FTE) were to be employed, with 6,233 of them being permanent and 1,167 temporary employees (Deutscher Bundestag 2016a). Moreover, additional staff was deployed by several Federal ministries and authorities (such as the Federal Labour Office, Vivento, Deutsche Bahn, Deutsche Post or the German customs authorities) to support the Federal Office for Migration and Refugees (see Grote 2018: 51 et seq.).

⁵³ This subchapter is based on Grote 2018: 63.

Figure 3: Active facilities of the Federal Office for Migration and Refugees as of 31 December 2017



Federal Office
for Migration
and Refugees



Active locations* of the Federal Office for Migration and Refugees

● Location

**Branch office carries out the tasks of an arrival centre

● of which newly established locations since 2015

● Headquarter

* more than one facility at one location possible

Location* established with a special function or assigned a special function in 2015 or later

➤ Arrival centre

➤ Decision-making centre (EZ)

➤ Processing line

➤ Waiting room

➤ Asylum interview centre

DU Dublin centre

Z Dispatch centre

© GeoBasis-DE / BKG 2017, own arrangement.
Cartography and layout: Federal Office for Migration and Refugees, date:
31 December 2017¹

Source: Federal Office for Migration and Refugees

New President of the Federal Office for Migration and Refugees

On 1 February 2017, Jutta Cordt was officially appointed as new President of the Federal Office for Migration and Refugees. She had been deputy head of the Federal Office since October 2016 and taken over from her predecessor Frank-Jürgen Weise at the beginning of 2017. Before, she headed the management of the Federal Labour Office's Regional Offices in Saxony and, from 2014, in Berlin-Brandenburg (BAMF 2017i).

Commissioner for Refugee Management

In order to continue and improve the cooperation between all actors in the area of refugee management, then-Minister of the Interior Thomas de Maizière created the office of the Commissioner for Refugee Management and appointed Frank-Jürgen Weise for the post in 2017. Weise had temporarily headed the Federal Office for Migration and Refugees from September 2015 until the end of 2016. The Commissioner's task was to initiate cross-level and cross-authority solutions to implement asylum procedures, promote returns, improve the quality of asylum-related data and strengthen co-operation in the field of integration (BMI 2017e). Beyond strategic initiatives in these fields, concrete cross-authority projects were initiated and coordinated (Deutscher Bundestag 2016b: 84; BAMF 2016c). Three examples of measures which the Commissioner initiated and/or co-ordinated are: 1. Improving the data quality at the Central Register of Foreigners in order to create an optimal basis for political, legal and operative decisions, particularly with regard to return measures; 2. supporting foreigners authorities by facilitating the transfer of interested Federal civil servants; 3. participation in the pilot project 'Integrated Return Management'. The Commissioner's position was meant to be temporary and was abolished at the end of 2017.

4.1.3 Developments referring to the EU

Dublin transfers to other Member States

On 8 December 2016, the EU Commission recommended to re-start Dublin transfers to Greece from 15 March 2017. The Federal Office for Migration and Refugees had stopped the Dublin transfers to Greece in January 2011 and invoked the sovereignty clause

pursuant to Article 17 para 1 of the Dublin II Regulation. In spring 2017, Germany re-started making Dublin requests to Greece and made a total of 2,312 requests in 2017, with 81 being accepted. However, no transfer took place in 2017 (BAMF 2018b: 28 et seq.; Deutscher Bundestag 2018b: 21 et seq.).

Moreover, Germany stopped Dublin transfers to Hungary in May 2017 after the EU Commission started an asylum-related Treaty infringement procedure against Hungary and Hungary did not provide individual assurances that transferred asylum seekers would be treated in line with EU law (Deutscher Bundestag 2018b: 24).

In 2017, Germany made 64,267 transfer requests to other member states under the Dublin Regulation, which amounts to an increase by 15.4% compared to the previous year (2016: 55,690). This increase is to some extent due to the work of the Dublin centres. Even though these centres were not fully operational until 1 June 2017, they made 70% of all transfer requests in 2017. 7,102 persons were actually transferred in 2017, i.e. 79% more than in the preceding year (2016: 3,968). As in the preceding year, most of them were transferred to Italy (2,110), to Poland (939) and to France (530) (BAMF 2018d: 29).

The number of transfer requests from other member states to Germany declined from 31,523 in 2016 to 26,931 in 2017. 8,745 persons were actually transferred to Germany (2016: 12,091), with most of them coming from Greece (3,164), the Netherlands (1,141) and France (1,016) (BAMF 2018d: 29).

Judgment by the European Court of Justice on late transfer requests under the Dublin procedure

On 26 July 2017, the European Court of Justice published its judgment in the case *Tsegezab Mengesteab vs the Federal Republic of Germany* (C-670/16). The Court ruled that an asylum applicant "may rely in legal proceedings on the fact that the Member State has become responsible for examining his application because of the expiry of the three-month period within which that Member State may request another Member State to take charge of him" (EuGH 2017a: 1). On 14 September 2015, Tsegezab Mengesteab, an Eritrean national, applied for asylum in Bavaria, and the authorities issued him with a certificate of registration as an asylum seeker.

The Federal Office for Migration and Refugees was informed of this by 14 January 2016 at the latest.

Due to the backlog of asylum applications at the Federal Office, Mr Mengesteab was not able to lodge his application with the Federal Office before 22 July 2016. The Dublin examination showed that Italy had already taken fingerprints and was therefore responsible for processing the asylum application (EuGH 2017a: 1). The Federal Office therefore rejected the asylum application and ordered a transfer to Italy. Mr Mengesteab challenged this decision and claimed that the three-month period for making a transfer request had expired and responsibility for the asylum procedure had therefore been transferred to Germany.

The European Court of Justice followed this view. It held that an application for international protection was deemed to have been lodged if a written document, prepared by a public authority and certifying that a non-EU national has requested international protection, had reached the responsible authority (EuGH 2017a: 2). Thus, the period for making a Dublin transfer request starts as soon as the authority obtains knowledge of an informal desire for asylum and not with the formal application. The decision of the European Court of Justice led to further streamlining of the procedures at the Federal Office for Migration and Refugees in order to ensure that all time limits can be complied with.

Refunctioning of the waiting centre at Erding for the EU relocation procedure

On 31 December 2016, the waiting centre at Feldkirchen was dissolved. The waiting centre at Erding was repurposed from the beginning of September 2016. It now serves as an accommodation, registration and allocation centre for persons whom Germany takes over from Italy and Greece under the EU relocation procedure. The procedure started when the first charter flight with 150 persons arrived from Greece on 7 September 2016. From 8 September 2016 and during 2017, regular operations were taken up in line with orders of the Federal Ministry of the Interior. Each month, 500 persons were to arrive by charter flights from each Italy and Greece. These relocated persons were then allocated in a similar procedure to that for 'regular' asylum seekers. Under the EU relocation procedure, the authorities try to find family members in Germany and, if possible, place the asylum seekers near their families. The centre co-operated with the IOM in Greece and Italy, where the asylum seekers were prepared for their journey to Germany (see Grote 2018: 59).

Germany heads GDISC

On 1 January 2017, the Federal Office for Migration and Refugees took over as chair of the GDISC (General Directors' Immigration Services Conference) network and established a GDISC secretariate in this context. GDISC is an informal association of 34 European migration and asylum offices (28 EU member states as well as Bosnia and Herzegovina, Iceland, Macedonia, Norway, Switzerland and Turkey), which meet several times a year to exchange experiences and co-operate. At the events, the heads of the offices focused on improving procedures, digitisation, flexible organisation in order to ensure quick responses to new situations and security issues in the framework of asylum procedures. So-called mini networks at the specialist level focus on forecasts, IT, communication and issues of asylum law.

4.2 European Asylum Support Office (EASO)

4.2.1 Background and general context

The European Asylum Support Office (EASO) is an agency of the European Union headquartered in Malta. It was established under Regulation (EU) number 439/2010 of 19 May 2010.⁵⁴ According to the Regulation, the primary duties of EASO are:

- Supporting the Member States whose asylum and admission systems are heavily burdened either with operational measures or by coordinating support
- Strengthening the practical cooperation on asylum issues between EU Member States, and
- Contributing to the further development of the Common European Asylum System (CEAS), including cooperation with the neighbour states of the EU (so-called external dimension of the CEAS).

Apart from the assistance in the operational field, the EASO also coordinates the multilateral components of the intra-European relocation programme with which EU countries admit asylum seekers from

⁵⁴ Regulation (EU) 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

those Member States facing a particularly large influx of asylum seekers.

4.2.2 Developments referring to the EU

During 2017, efforts continued to focus on implementing the EU-Turkey Agreement (see Chapter 4.3.3), which aims at stopping irregular migration from Turkey to the EU. In order to achieve this goal, it was agreed that all newly arriving irregularly entering migrants, who entered the Greek Islands from Turkey from 20 March 2016 onwards, are to be returned to Turkey, while for each returned Syrian another Syrian from Turkey is to be resettled to the EU. The Greek and Turkish authorities are responsible for implementing the agreement and receive support from the European Commission, the EU Member States and EU agencies such as EASO.

In addition, activities in connection with the so-called “hot spot” approach were another important issue. Member States may apply for support in crisis situations triggered by unusually high migration pressure. EASO, FRONTEX and EUROPOL will then help on the spot to identify and register new migrants and asylum seekers quickly. Those who are obviously in need of international protection are to be included in the European relocation procedure (see Chapter 4.3.3). If a case is doubtful, the respective member state itself from which the relocation shall take place conducts the asylum procedure itself (over the past few years Greece and Italy). In contrast, those who are not in need of protection were to be expelled.

Beyond dealing with its national tasks, the Federal Office for Migration and Refugees deployed a total of 140 staff (2016: 75) for about 12,100 days (2016: about 5,000 days) for EASO measures in 2017, with 132 of the Federal Office personnel being sent to Greece and 8 to Italy. “Decision-makers from the Federal Office for Migration and Refugees which had been sent to hot spots in Greece mainly conducted interviews and prepared documents for decisions. Staff from the Federal Office’s asylum procedure secretariates [...] were deployed to support registration efforts (in Italy) and pass on information” (Deutscher Bundestag 2018c: 2).

Moreover, the Federal Office for Migration and Refugees participated in training measures, for example by providing trainers, and helped to develop training modules. The Federal Office benefited from

these efforts by having its staff participate in EASO trainings or organising its own training modules for its staff on the basis of EASO training modules.

In addition, EASO-related work once again focused on the following issues during the past year:

- Strengthening the role of common training and professional development in the field of asylum
- Improving the quality of asylum processes and decisions
- Producing common Country of Origin Information (COI)
- Collecting and exchanging accurate and up-to-date information and documentation on the functioning of the CEAS and further developing an Early warning and Preparedness System (EPS) to provide analysis of trends
- Providing timely and comprehensive operational support to member states
- Fostering synergies between migration and asylum practices, including on return of failed asylum seekers
- Supporting the external dimension of the CEAS.

At the same time, efforts to reform EASO and develop it towards an ‘EU Agency for Asylum’ continued. The EU Commission released a proposal on a reform of EASO on 4 May 2016, which aimed to replace the current legal basis and expand the Office’s mandate (KOM 2016a). On 28 June 2017, “the Maltese Presidency of the Council and the European Parliament representatives reached a broad political agreement ad referendum on all twelve chapters of the regulation on the European Union Agency for Asylum” (Europäischer Rat 2017).

4.3 Cooperation with third countries, resettlement, humanitarian admission, relocation

4.3.1 Background and general context

Germany has been running humanitarian admission programmes (HAP) since 1956⁵⁵. The most prominent current examples are the three HAP for Syria, which, between 2013 and 2016, allowed 20,000 Syrians to enter Germany directly from Syria's neighbouring countries as well as from Egypt or Libya (see BMI 2013a, BMI 2013b and BMI 2014a). These three programmes have run out by now. Admission in the framework of a HAP is usually temporary, and the foreigners are not expected to stay permanently. Rather, they are permitted to stay as long as the state of crisis, war or threat in their country of origin continues. The third-country nationals are issued with a residence permit pursuant to Section 23 subs. 2 and, where applicable, 3 in conjunction with Section 24 of the Residence Act, which is first granted for three years, may be prolonged and allows its holder to pursue a remunerated activity.

On 9 December 2011, the Conference of Ministers and Senators for the Interior of the Länder advocated that Germany participates permanently in the admission and resettlement of refugees from third countries in particular need of protection (resettlement). Resettlement is an internationally recognised policy tool which is used to deal with long-term refugee crises. If refugees are unable to return to their country of origin and cannot be integrated in their country of refuge in the foreseeable future, they are allowed to legally enter other countries which are prepared to admit them and take up permanent residence in these countries. Refugees are resettled in cooperation with the UNHCR, the IOM, the appropriate national agencies in the initial countries of refuge, and the local German diplomatic mission, all with the financial participation of the EU Commission. Resettlement refugees will receive a residence permit pursuant to Section 23 subs. 4 of the Residence Act, which entitles them to take up paid employment or touch social security benefits. During a pilot phase from 2012 until 2014, 300 refugees were

admitted every year. In 2015, the Federal Government and the Länder agreed to increase the national resettlement quota for Germany to 500 persons. These 500 persons were set off against the EU resettlement programme in 2016/2017. The total number for 2016/2017 was 1,600 (see below, Chapter 4.3.3).

In 2016 and 2017, Germany also participated in the EU relocation procedure from Italy and Greece and humanitarian admission programmes for Syrians from Turkey in the framework of the EU-Turkey agreement (see below).

Moreover, all Länder except for Bavaria had set up private sponsorship programmes to permit Syrians to bring their relatives to Germany pursuant to Section 23 subs. 1 of the Residence Act since 2013. These programmes require the sponsors to declare on behalf of every applicant that they will bear all living costs for their relatives and provide evidence of an appropriate income for that purpose. The sponsors will need to shoulder the complete costs; the "new arrivals will not receive social security benefits apart from medical care in case of sickness" (resettlement.de 2018a).

4.3.2 National developments

Prolongation of the Länder programmes

Five Länder have extended their private sponsorship programmes beyond 2017 to the end of 2018. These include Brandenburg (until 30 September 2018), Hamburg (until 30 November 2018), Berlin, Schleswig-Holstein and Thuringia (until 31 December 2018; see also resettlement.de 2017a, 2018b). Private sponsorship programmes in the other Länder have run out in the years after their introduction in 2013.

4.3.3 Developments referring to the EU

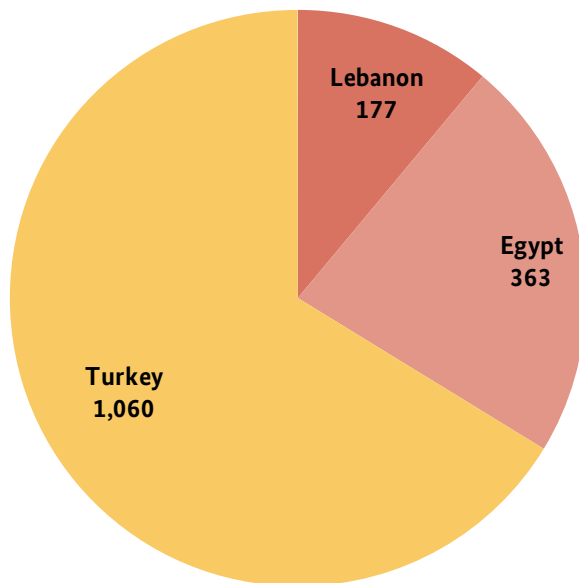
EU resettlement 2016/2017

Germany participated in the resettlement pilot programme of the European Union and committed itself to admitting a total of 1,600 refugees in 2016/2017. The annual resettlement contingent of 500 persons was counted towards this total. In 2016, Germany admitted 1,060 Syrian asylum seekers from Turkey and 155 from Lebanon. In 2017,

⁵⁵ For an overview of the humanitarian admission programmes since 1956 see Grote/Bitterwolf/Baraulina 2016: 15.

22 additional Syrians were admitted from Lebanon and 363 asylum seekers from Sudan, Syria, Ethiopia, Eritrea, Somalia, Iraq, Iran, Zimbabwe and Chad were admitted from Egypt, which meant that the contingent of 1,600 persons was fully exhausted by the end of 2017 (see resettlement.de 2018b).

Figure 4: Admissions to Germany in the framework of the EU resettlement programme, by most recent country of residence (2016 - 2017)



Source: Resettlement.de 2018b

EU resettlement programme for 50,000 refugees by end-October 2019

On 27 September 2017, the EU Commission presented a new European resettlement programme for at least 50,000 refugees, which are to be admitted to the member states by October 2019. The EU Commission will provide EUR 500 million for this purpose. While the resettlement of persons in need of protection from Turkey will continue, the focus is to be broadened to people in North Africa and from the Horn of Africa (KOM 2017c). The Commission asked the member states to pledge how many resettlement refugees they were willing to admit under the new programme. First, Germany did not make a concrete commitment within the period under consideration by the end of 2017 because the coalition talks had not yet been concluded. 19 other member states pledged a total of almost 40,000 places. In absolute terms, France (10,200 places), Sweden (8,750) and the United Kingdom (7,800) made the biggest commitments (KOM 2018c: 2). After the formation of a new government in Germany, the Ministry of the Interior pledged to the EU Commission that

Germany will offer 10,200 places under the EU resettlement programme for 2018/2019.

EU relocation and humanitarian admission of Syrians in need of protection from Turkey in the framework of the EU-Turkey Agreement⁵⁶

In order to achieve a fairer distribution of asylum seekers within Europe and above all to ease the burden on Italy and Greece, which bore the brunt of asylum seekers coming over the Mediterranean and of first admissions, the Justice and Home Affairs Council (JHA/EU Council) adopted a decision on 14 September 2015 to initially admit 40,000 asylum seekers from Italy and Greece and to relocate them within 24 months ((EU) 2015/1523)⁵⁷. Germany pledged to admit 10,500 of these asylum seekers.

The Council adopted another decision on 22 September 2015 (2nd Relocation Decision) in order to ease the burden on Italy and Greece, which provided for the relocation of 120,000 additional asylum seekers to other Member States ((EU) 2015/1601).⁵⁸ A distribution key based on four criteria (size of the population, total GDP, average number of asylum applications per one million of inhabitants over the period 2010 - 2014 and the unemployment rate) was used to determine the number of persons to be relocated to each Member State (KOM 2015a: 2). The relocation of 120,000 asylum seekers in accordance with the second Council Decision was to be broken down into two stages of 66,000 and 54,000 places.

The first stage envisaged Germany taking in a total of 17,036 asylum seekers⁵⁹ from Greece and Italy, with a monthly contingent of 500 places being reserved from September 2016. The host member state receives a payment of EUR 6,000 from the EU for every person relocated under this scheme. By 31 December 2017, Germany had admitted a total of 10,267 asylum seekers from both countries under the relocation scheme, specifically 4,894 asylum seekers from Italy and 5,373 from Greece (see Table 2). The scheme ran out in spring 2018, as only

⁵⁶ This subchapter is based on Grote 2018: 25 et seq.

⁵⁷ Council Decision 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece.

⁵⁸ Council Decision 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece.

⁵⁹ The promised 17,036 relocation places were to be distributed among the two countries as follows: 4,027 asylum seekers from Italy and 13,009 asylum seekers from Greece.

Table 2: Admissions under the relocation procedure (2015 - 2017)

	2015	2016	2017	Total
Relocations from Italy	11	444	4,439	4,894
Relocations from Greece	10	634	4,729	5,373

Source: Federal Office for Migration and Refugees; as of 30 December 2017

Table 3: Admissions under the EU resettlement programme (2015 - 2017)

Admission programme	2015	2016	2017	Total
Resettlement from Turkey (in the framework of the EU-Turkey Agreement)	-	1,060	-	1,060
Resettlement from Lebanon	-	155	22	177
Resettlement from Egypt	-	-	363	363

Source: Federal Office for Migration and Refugees; as of 30 December 2017

Table 4: Admissions on humanitarian grounds from Turkey in the framework of the EU-Turkey Agreement (2015 - 2017)

Admission programme	2015	2016	2017	Total
Admissions on humanitarian grounds from Turkey in the framework of the EU-Turkey Agreement	-	-	2,997	2,997

Source: Federal Office for Migration and Refugees; as of 30 December 2017

those asylum seekers who arrived in Greece or Italy before 26 September 2017 could be considered (KOM 2017e). The European Council adopted a decision ((EU) 2016/1754)⁶⁰ for the second stage of the relocation of 54,000 asylum seekers on 29 September 2016, enabling these places to be made available to Syrians in need of protection from Turkey instead in the framework of the EU-Turkey Agreement (1:1 mechanism). Germany initially participated in the 1:1 mechanism within the framework of its increased resettlement contingent (see above: EU resettlement and Table 3).

On 11 January 2017, the Federal Ministry of the Interior ordered that Syrian refugees from Turkey should be admitted on humanitarian grounds pursuant to Section 23 subs. 2 of the Residence Act. Another 2,997 refugees were admitted on humanitarian grounds from Turkey via the 1:1 mechanism by the end of 2017 (see Table 4). Apart from the decision mentioned above, the Federal Ministry of the Interior stated on 29 December 2017 that up to

500 refugees from Turkey should be admitted each month on humanitarian grounds until 31 December 2018.

4.3.4 International developments

Germany chairs the Annual Tripartite Consultations on Resettlement

On 13 June 2017, Germany took over as the chair of the 'Annual Tripartite Consultations on Resettlement' (ATCR), the most important international conference on resettlement and humanitarian admission. Since 1995, representatives of governments, NGOs and international organisations meet once a year at the ATCR conference and the preceding 'Working Group on Resettlement' (WGR) to exchange their experiences. The Ministry of the Interior acts as chair and the German Caritas Association (Deutscher Caritasverband) acts as civil-society co-chair for Germany (BMI 2018a). Together with the UNHCR, they were responsible for the topics discussed at the ATCR conference and in the working groups during their one-year chairmanship (Resettlement.de 2017b).

⁶⁰ Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 205/1601 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece.

5 Unaccompanied minors and other vulnerable groups

5.1 Unaccompanied minors

5.1.1 Background and general context

Unaccompanied minors⁶¹ are third-country nationals or stateless persons below the age of 18 years who arrive unaccompanied by an adult responsible for them and are not factually in the care of another responsible adult. Unaccompanied minors come to Germany because they are fleeing from acts of war, human-rights violations or economic distress or because they are sent to Europe by their family. There are also child-specific reasons for flight, for example being forced to serve as child soldiers, gender related persecution (genital mutilation), violence in the family, child prostitution, forced marriages or clan liability (Deutscher Bundestag 2017h: 45). Some UMs lose their family members before, during or after the flight, others are separated from or left behind by their parents during the flight.

As soon as unaccompanied minors arrive in the Federal territory, they are taken into preliminary care by the responsible youth welfare office (Section 42a subs. 1 first sentence of the Eighth Book of the Social Code). As part of preliminary care, these children and juveniles receive accommodation and medical care. Preliminary care also includes an official procedure to assess the minor's age (Section 42f of the Eighth Book of the Social Code). At this point, the youth welfare office is also endowed with an emergency power of representation in all legal matters. In addition, the youth welfare office has to determine - by means of an initial clearing procedure - whether the unaccompanied minor should be included in the national distribution procedure.

This procedure was introduced in November 2015 in order to better exploit available accommodation capacities, but also to arrive at a fairer distribution of the burdens on the municipalities. During this procedure different criteria are taken into consideration, such as safeguarding the best interest of the child, the issue of whether s/he has siblings or relatives in Germany or abroad and his or her state of health. If it is possible to include the unaccompanied minor in the distribution procedure, s/he will be brought to the responsible Land, which is determined on the basis of a quota system (analogous to the so-called 'Königstein key'). There, the competent authority pursuant to Land law decides on the distribution within the Land.

Only once this procedure is completed, the unaccompanied minor will be taken into regular care, during which the responsible youth welfare office provides accommodation and healthcare. After the unaccompanied has been taken into regular care, the so-called 'clearing procedure' plays a central role (Section 42 subs. 2 first sentence of the Eighth Book of the Social Code). It serves inter alia to determine the minor's needs for youth welfare assistance measures and to decide whether an asylum application should be filed or if another type of applying for or securing residence could be considered (on recent developments see Chapter 5.1.2). Depending on the available capacities and the minor's individual assistance needs, the unaccompanied minor will be accommodated in regular youth welfare institutions, in facilities designed specifically to the needs of unaccompanied minors or in host or foster families. In addition, the family court will appoint a guardian, who has personal custody for the unaccompanied minors and represents the children or juveniles in all legal matters. Individuals, registered associations can be guardians as well as the youth welfare office (in this case as official guardian) (for a detailed overview see Tangermann/Hoffmeyer-Zlotnik 2018: 25 et seqq.).

Asylum applications on behalf of unaccompanied minors are filed in writing with the Federal Office

61 Several terms are being used for the group of minors who arrive in Germany without their parents: unaccompanied minors, unaccompanied minor refugees, unaccompanied foreign minors or unaccompanied minor foreigners. Which term should be used eventually, is intensively discussed (see, for example, BumF 2015a; Noske 2012). This report uses the term 'unaccompanied minors'.

for Migration and Refugees by the responsible youth welfare office or the guardian. Unaccompanied minors are not considered to be able to legally act for themselves in the asylum procedure and therefore cannot file the application themselves. In the course of the asylum procedure, authorities first check whether Germany is responsible under the Dublin III Regulation (see Chapter 4.1.1). Generally, during this step, the authorities shall examine (as is done by the youth welfare offices) whether it is possible to have the unaccompanied minor be reunified with a family relative living in another member state.

The best interest of the child plays a predominant part in these deliberations (Recital (13), Article 6 para 1 in conjunction with Article 8 para 1 of the Dublin III Regulation). If no family members, siblings or relatives are living in one of the Dublin states, according to the judgment by the European Court of Justice of 6 June 2013⁶², the member state where the minor has filed the most recent application for international protection is responsible. The Federal Office for Migration and Refugees has trained so-called 'specially-commissioned case-officers' for dealing with asylum applications by unaccompanied minors in order to ensure that the special needs of unaccompanied minors are sensitively taken into account (Müller 2014: 19 et seq.).

If the asylum application is rejected or if no asylum application or an application for another type of residence title is filed, unaccompanied minors are usually issued a suspension of removal until they reach the age of majority. While in legal terms unaccompanied minors may return voluntarily or be removed, the EU Return Directive (2008/115/EC) requires the foreigners authority to make sure that the transfer as well as assistance for the minor in the return state is ensured by a family member, a person with custody or a suitable reception facility before it launches concrete removal measures (Section 58 subs. 1a of the Residence Act). This is almost impossible in practice, which is why no unaccompanied minors have been removed in recent years. In contrast, voluntary returns, removals following unauthorised entry and refusals of entry at the border do take place, even though their number is comparatively low (Tangermann/Hoffmeyer-Zlotnik 2018: 68).

5.1.2 National developments

Statistics – Number of unaccompanied minors taken into care and number of asylum applications

At the time of writing, figures on preliminary and regular taking into care were available up to and including 2016. They show that the number of minors who were taken into care due to entering unaccompanied from abroad rose strongly between 2013 and 2016. They amounted for more than half of all cases of minors being taken into care by the youth welfare offices in 2015 and 2016. Most new arrivals were juveniles aged 14 – 17, with the large majority being male (StBA 2017d).

The number of first-time asylum applications by unaccompanied minors jumped from 2,486 to 35,939 between 2013 and 2016 (see Table 5). In 2017, it then dropped considerably, to 9,084. In 2017, the five main countries of origin were Afghanistan (2,213), Eritrea (1,544), Somalia (1,204), Guinea (903) and Syria (708). The total protection rate, i.e. the number of persons granted asylum, refugee or subsidiary protection and the number of removal bans in relation to the total number of decisions, was 78% in 2017. It was down from 89% in the preceding year, not least because the share of applicants from Syria was considerably higher in 2016 (see EMN/BAMF 2017: 49).

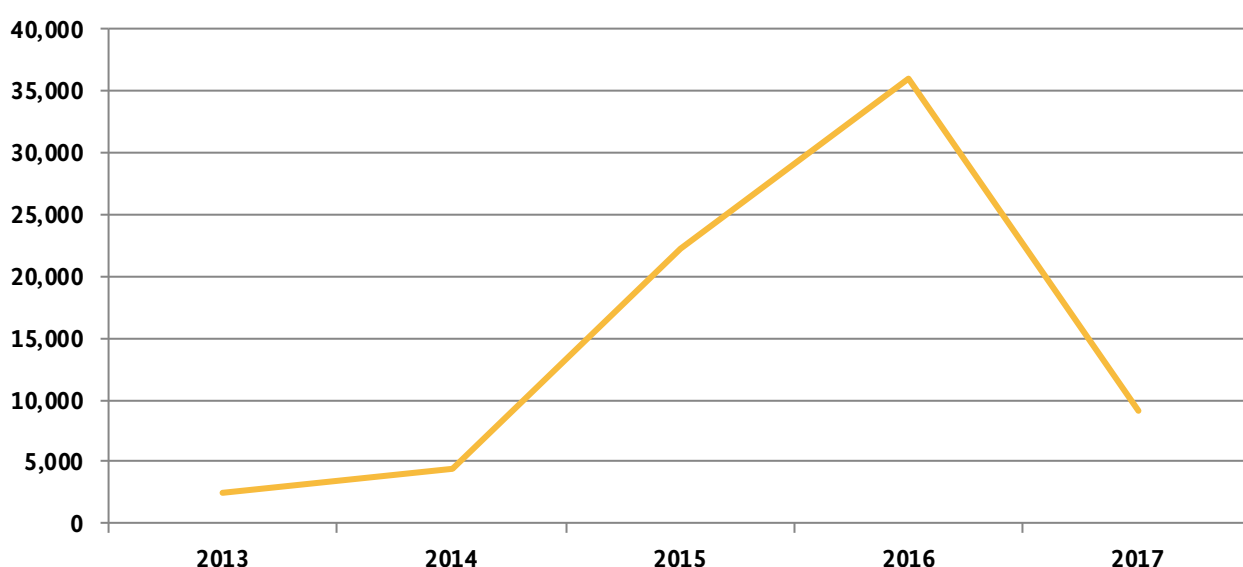
The number of asylum applications is considerably below that of unaccompanied minors taken into care because the latter figure also includes unaccompanied minors from other EU member states and unaccompanied minors who abscond and travel to other countries. Moreover, unaccompanied minors can reside in Germany under other provisions, as they are usually protected against removal until they are of age.

62 C-648/11.

Table 5: Unaccompanied minors taken into care and asylum applications by unaccompanied minors (2013 – 2017)

Year	Unaccompanied minors entering from abroad and taken into care	First-time asylum applications by unaccompanied minors	Protection rate for first-time asylum applications by unaccompanied minors
2013	6,584	2,486	57%
2014	11,642	4,398	73%
2015	42,309	22,255	90%
2016	44,935	35,939	89%
2017 (as of Dec.)	Not available	9,084	78%

Source: Federal Office for Migration and Refugees; Tangermann/Hoffmeyer-Zlotnik 2018

Figure 5: Unaccompanied minors, first-time applicants (in persons) (2013 – 2017)

Source: Federal Office for Migration and Refugees

Statistics – Returns of unaccompanied minors

Between the beginning of 2015 and the end of 2017 there were no removals of unaccompanied minors. However, 171 unaccompanied minors were refused entry at the border and 66 were removed following unauthorised entry (Deutscher Bundestag 2018d: 27)⁶³. 80 unaccompanied minors left Germany with the support of the REAG/GARP programme, down from 170 in 2016. Overall, 385 unaccompanied minors left Germany under this programme between 2013 and 2017. Most often return assistance was granted to Albanian or Afghan unaccompanied minors (Tangermann/Hoffmeyer-Zlotnik 2018: 21).

⁶³ Please see the box in Chapter 8.1 for explanations of the terms.

Act to Improve the Enforcement of the Obligation to Leave the Country

The Act to Improve the Enforcement of the Obligation to Leave the Country, which entered into force on 29 July 2017, contains a change relevant to unaccompanied minors. During regular taking into care, the youth welfare office is now obliged to immediately file an asylum application if the circumstances justify the presumption that the child or juvenile is in need of international protection. The unaccompanied minor in question is to be involved in the procedure (Section 42 subs. 2 fifth sentence of the Eighth Book of the Social Code). This provision was intensively discussed by child and youth welfare organisations (see Achterfeld 2017) and criticised by practitioners as “unclear and a change giving rise to misunderstandings in practice” (BumF 2017a: 2) because among other things it would suggest a general

obligation of youth welfare offices to file an asylum application for all unaccompanied minors, without taking into account the circumstances of the individual case, and that this had become “common practice in some municipalities and districts” (BumF 2017a: 5). However, in contrast to other measures to ensure continued residence, an asylum application would not always be in the best interests of the child (BumF 2017a: 4). The Federal Government emphasised in its explanatory reasoning for the Act that “with a view to the time of the application, the youth welfare offices shall take into account whether the personal situation of the unaccompanied minor allows the launch of the asylum procedure”. Beyond, youth welfare offices are only obliged to take legal actions which are necessary in the best interests of the child (Deutscher Bundestag 2017i: 24).

Age assessment of unaccompanied minors

The question of age assessment of newly arrived juveniles and the legal consequences connected to this (e.g. entitlement to child and youth welfare assistance, applicability of child-specific removal bans etc.) has repeatedly been discussed in the last few years. In 2015, a uniform official age assessment procedure was explicitly included in the provisions governing preliminary taking into care (Section 42f of the Eighth Book of the Social Code). This procedure consists of three possible steps: firstly, the age is assessed by the identity documents provided. If this is not possible, a trained visual observation by the competent youth welfare office is performed. Only in cases in which there is still doubt about the non-age, a medical examination can be arranged, which can only be carried out with the consent of the person concerned and his or her legal representative (Section 42f subs. 2 of the Eighth Book of the Social Code). However, the practice of age assessment differs from Land to Land (Deutscher Bundestag 2017h: 34 et seq.). In 2017, several political and media discussions about age assessment took place (see Chapter 2.2). Thomas de Maizière, then Minister of the Interior, demanded at the beginning of January 2018 that Book VIII of the German Social Code be amended accordingly and that standardised procedures be developed (BMI 2018b).

Raising the legal age for marriage from 16 to 18 years

Since the ‘Act Prohibiting Child Marriages’⁶⁴ entered into force on 22 July 2017 it is not possible to marry under the age of 18 years. This provision was also extended to marriages entered into by minors abroad. Marriages automatically turn invalid if one of the spouses was not at least 16 years old at the time of marriage. An annulment procedure in court is not necessary in these cases (BMJV 2017b). If at least one partner was aged above 16, but not yet 18 at the time of marriage, the marriage must be annulled by a judge. It may continue to exist only in cases of special hardship, for example if the spouse has become a legal adult in the meantime and confirms the marriage (Article 13 para 3 of the Introductory Act to the Civil Code⁶⁵; BMJV 2017b). This has asylum-related consequences e.g. for the youth welfare offices, because they must take unaccompanied minors into care even if these are married (under foreign law), and they have entered Germany without being accompanied by a person with custody or by their parent or guardian (Section 42a subs. 1 second sentence of the Eighth Book of the Social Code). If a marriage between minors is annulled by a judge or found to be invalid, the adult partner cannot benefit from family asylum or international protection for family members. The minor partners in such relationships can still benefit from family asylum or international protection for family members (Section 26 subs. 1 second sentence of the Asylum Act). Moreover, “minors may not marry or be engaged in the framework of a religious or traditional ceremony/act” and “participants and witnesses may be subject to a fine of up to EUR 5,000” (Sections 11 and 70 of the Civil Status Act).

Participation in such a ceremony may constitute a “serious interest in expelling the foreigner”, “in particular if the minor is not yet 16 years old” (Section 54 subs. 2 no. 6 of the Residence Act; Terre des Femmes 2017: 2). While civil society organisations welcomed the higher marriage age in principle, they criticised the automatic annulment, saying that, by excluding court proceedings for the individual case, the law did not allow for the possibility of examining whether a marriage might be in the best interests of the child in the individual case (DIMR 2017a: 3 et seq.).

64 BGBl. 2017 Part I No. 48: 2429.

65 Introductory Act to the Civil Code, in the version published on 21 September 1994 (BGBl. Part I p. 2494, amended 1997 p. 1061), last amended by the Act of 20 July 2017 (BGBl. Part I p. 2787) taking effect on 1 October 2017 (BGBl. Part I p. 2446).

5.2 Other vulnerable groups

5.2.1 Background and general context

Pursuant to Article 21 of the European Reception Conditions Directive (Directive 2013/33/EU), vulnerable groups with special needs of protection include unaccompanied minors, accompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation. While there is no reliable data on the share of particularly vulnerable refugees, there are estimates which assume that up to 15% of all refugees belong to one of the groups listed above (Deutscher Bundestag 2017j: 2).

It is the Länder which are responsible for housing and accommodating vulnerable refugees. They need to make sure that refugees are “housed in appropriate accommodation, which provides adequate protection against violence, for example separate bedrooms which can be locked. This includes adequate training for the staff working at the facility” (Deutscher Bundestag 2017j: 11).

Specially-commissioned case-officers are involved in the handling of applications submitted by certain groups of asylum seekers (unaccompanied minors, persons persecuted on the grounds of their sex, victims of human trafficking or of torture and traumatised asylum applicants). They have received special training concerning the special needs of individual vulnerable groups and concerning special legal, cultural and psychological issues. This enables them to handle the procedure carefully and put the asylum application into context. In addition, all decision-makers are required to “take potential impairments of the applicants into account (...). This applies to both bodily and psychological health, regardless of whether the impairments were caused by persecution or flight or not” (Deutscher Bundestag 2017j: 9). Employees of the Federal Office for Migration and Refugees themselves are not trained to diagnose illness or impairment. If the question of whether or not the applicant is fit for the asylum procedure or if the decision on the application itself depends on whether or not the applicant has an illness or impairment, a medical assessment is taken into consideration, that may be commissioned by the applicant

him- or herself or by the Federal Office for Migration and Refugees.

The Act on Benefits for Asylum Seekers contains provisions on medical treatment for particularly vulnerable asylum applicants. Section 4 of the Act on Benefits for Asylum Seekers guarantees basic medical treatment for all asylum seekers. Particularly vulnerable applicants will additionally receive necessary medical or other care (Section 6 subs. 2 of the Act on Benefits for Asylum Seekers). Other benefits may be granted “if they are necessary to secure the applicants’ livelihood or their health” (Section 6 subs. 1 of the Act on Benefits for Asylum Seekers). Asylum applicants who have been in Germany for 15 months are entitled to the same healthcare benefits as those who are members of the statutory healthcare system (see Section 2 subs. 1 of the Act on Benefits for Asylum Seekers; Deutscher Bundestag 2017j: 3).

Special integration courses exist for refugees with sensory or cognitive impairments including 900 units of language class (general integration courses contain 600 units of language class). “In addition, the Federal Office for Migration and Refugees may reimburse the course provider on application for special expenses incurred as far as they are necessary for enabling course attendance” (Deutscher Bundestag 2017j: 18).

5.2.2 National developments

Minimum standards for the protection of vulnerable refugees

In 2016, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), UNICEF and other civil-society organisations jointly launched the ‘Initiative for the Protection of Children and Women in Refugee Accommodation Centres’. In 2017, this project was renamed ‘Initiative for the Protection of Refugees in Refugee Accommodation Centres’ (Deutsches Forum Kriminalprävention, n.d.). Its scope was extended to LGBTI*⁶⁶ refugees, refugees with impairments and other vulnerable groups of persons (Bundesinitiative Schutz von geflüchteten Menschen in Flüchtlingsunterkünften, n.d.). Moreover, the number of civil-society

66 LGBTI* is a German acronym for “lesbian, gay, bisexual, transsexual, intersexual”.

organisations which support the initiative has risen from 16 to 37 in 2017 (BMFSFJ 2017a).

In 2016, the initiative had already prepared and published “Minimum Standards for the Protection of Children, Juveniles and Women in Refugee Accommodation Centres”. An updated version of 2017 also includes guidelines on the treatment of refugees with impairments and LGBTTIQ* refugees⁶⁷ (Deutsches Forum Kriminalprävention, n.d.).

In addition, the BMFSFJ has been providing funds to establish coordination points for the protection against violence in reception facilities since 2016. Following a pilot phase at 25 facilities, the concept was extended to a total of 100 accommodation centres in 2017. The coordinators are to develop concepts for the protection of refugees and serve as points of contact for a number of authorities and advisory centres as well as the police and closely cooperate with them (BMFSFJ 2017b). They are trained by UNICEF and supported “in providing child-friendly places and activities as well as in collecting data, monitoring and analysing the progress made” (Bundesinitiative Schutz von geflüchteten Menschen in Flüchtlingsunterkünften, n.d.). According to Federal Minister of Family Affairs Katarina Barley, the initiative had considerably improved “protection for thousands of refugees, in particular children and women” (BMFSFJ 2017a).

“Moreover, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Kreditanstalt für Wiederaufbau group, jointly with Deutsches Forum für Kriminalprävention, have launched a programme to finance construction measures for the protection of women and children in refugee accommodation centres” (Deutscher Bundestag 2017j: 11 et seq.).

In 2017, Rhineland-Palatinate was the first Land to draft a violence prevention concept for reception facilities. Beyond concrete violence prevention measures, the concept aims at “enabling staff to identify protection needs more quickly, for example in case of traumatisation” (Ministerium für Familie, Frauen, Jugend, Integration und Verbraucherschutz des Landes Rheinland-Pfalz 2017).

Act Strengthening the Rights of Children and Adolescents

In 2017, the Bundestag adopted the ‘Act Strengthening the Rights of Children and Adolescents’ (German: Gesetz zur Stärkung von Kindern und Jugendlichen, KJSG). Among other things, this Act foresees changes to the supervisory structures of children’s homes and loosens doctor-patient confidentiality rules if doctors suspect abuse. Moreover, it obliges the Länder to take appropriate measures to protect children, adolescents and women in refugee reception facilities. The operators of such facilities are obliged to develop prevention concepts or guarantee minimum standards (BMFSFJ 2017c). At the time of writing, the bill had not yet passed the Bundesrat (Bundesrat 2017b).

Project “Queer Refugees Germany”

In December 2017, the Lesbian and Gay Federation in Germany (Lesben- und Schwulenverband Deutschland) started the project “Queer Refugees Germany”. It is centred around a multi-language internet portal⁶⁸, which contains, among other things, a list of contact points for LSBTTIQ* refugees in Germany and information on asylum laws. The project aims to “provide a network for existing structures and support them in their work. (...) In addition, staff at reception facilities and advisory centres can receive training and advice for their work with LSBTI refugees” (LSVD 2018). Refugees are to be supported in efforts to “organise themselves and create their own networks” (LSVD 2018). In addition, they can obtain advice on legal and social security matters (LSVD 2018). The project is supported by the Federal Government Commissioner for Migration, Refugees, and Integration.

⁶⁷ LGBTTIQ* is a German acronym for “lesbian, gay, bisexual, transsexual, transgender, intersexual, queer”.

⁶⁸ <http://www.queer-refugees.de/> (9 April 2018).

6 Integration and anti-discrimination measures

6.1 Integration

6.1.1 Background and general context

Integration is a cross-sectional task. The Interior Ministry is responsible overall for social cohesion, immigration, and integration, while sharing these tasks with other ministries, such as the Federal Ministry of Labour and Social Affairs (BMAS), the Federal Ministry of Education and Research (BMBF), the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) and the Federal Ministry of Economics and Energy (BMWi). The operative responsibility for the integration measures of the Federal Government rests with the Federal Office for Migration and Refugees. In addition, the Länder and the local authorities are important players in the field of integration.

The Residence Act, which took effect on 1 January 2005, enshrined integration offers into Federal law for the first time (Sections 43–45 of the Residence Act). In Germany, integration is regarded as a task for which the Federal level, the Federal Länder and the local governments are responsible. The first integration summit in 2006, the ‘National Integration Plan’ presented by the Federal Government in 2007, the nationwide ‘Integration Programme’ developed in 2010, the ‘National Action Plan on Integration’ (2012) and the Recognition Act⁶⁹ of the same year are some of the key integration policy activities at the Federal level. On 6 August 2016, the Integration Act entered into force. This omnibus act led to several amendments in Books Two, Three and Twelve of the German Social Code, in the Act on Benefits for Asylum Seekers, in the Asylum Act, in the Residence Act and in the Act on the Central Register of Foreigners. The amendments refer to inter alia the introduction of residence obligations, new regulations on access to vocational training and the labour market for persons with a suspension of removal and asylum

applicants, new integration measures and courses, benefit cuts and the introduction of benefits in-kind as well as changes to the preconditions for issuing beneficiaries of protection with a permanent settlement permit. This led to changes in other areas, which are described in more detail in the relevant chapters (see, i.a., Chapters 4 and 8).

Sections 43 – 45a of the Residence Act and the Ordinance on Integration Courses⁷⁰, which was amended in the course of the entering into force of the Integration Act, too, provide the legal basis for integration measures on Federal level. Foreign nationals who obtained their residence title after 1 January 2005 may be entitled to attend integration courses under certain conditions. In contrast, participation is compulsory for newly arrived migrants if they are unable to communicate at a basic or sufficient level in German or if they receive unemployment benefits according to the Second Book Social Code. However, certain exceptions apply (Section 44a subs. 2 of the Residence Act). The integration courses are at the core of the Federal integration measures. They shall begin between six weeks and maximum three months after entitlement or obligation of the participants. Moreover, the entitlement to attend lapses one year after the residence title establishing the entitlement has been issued or if this title expires (Section 44 subs. 2 of the Residence Act). In addition to the general integration course consisting of a 600-hour language course and a 100-hour orientation course, courses are also provided including the acquisition of literary skills, and specifically for women, parents, juveniles and young adults (who are no longer subject to compulsory school attendance). There are special catch-up classes with up to 900 hours of language instruction and 100 hours of orientation. There is also a so-called intensive course, which consists of 430 hours (400 hours of language classes and 30 hours of orientation). Asylum applicants with a good prospect to remain may also participate in an integration course. Since 1 January 2017, they may even be obliged to participate

69 Assessment and Recognition of Foreign Professional Qualifications Act.

70 Ordinance on Integration Courses for Foreigners and Ethnic German Repatriates (Integration Course Ordinance, IntV).

if they touch benefits under the Act on Benefits for Asylum Seekers (Section 5b subs. 1 of the Act on Benefits for Asylum Seekers). If these persons do not fulfil their obligation, their benefits may be reduced (Section 5b subs. 2 of the Act on Benefits for Asylum Seekers).

Language courses for professional purposes round off the range of integration courses. Recently, two parallel types of courses were on offer: the ESF-BAMF programme and the programme of vocational German language promotion. The Ordinance on German Language Support for Professional Purposes (DeuFöV), which entered into force on 1 July 2016, turned the language courses for professional purposes into a standard measure among the Federal language acquisition support measures. The ESF-BAMF programme ran out at the end of 2017. It had provided language training starting at level A1. Vocational German language promotion courses, on the other hand, build on the general language courses included in the integration courses. They are co-ordinated and conducted by the Federal Office for Migration and Refugees, which commissions private or public institutions to run the courses (Section 45a subs. 1 of the Residence Act). There are basic and advanced vocational German language promotion courses; the basic courses aim at reaching the language levels B2, C1 or C2. A course usually consists of 300 lessons (Section 12 of the Ordinance on German Language Support for Professional Purposes). A knowledge of German at the level of at least B1 is required to participate in the basic courses. In addition, there are three types of advanced courses: courses for specific professions in connection with recognition or access procedures for certain professions (up to 600 lessons), courses for specific industries and courses for persons who have not yet reached a level of B1, despite having participated in an integration course.

Besides the integration courses and the vocational German language promotion, there are other, sometimes low-threshold offers, such as courses specifically directed at women⁷¹ or initial orientation courses for asylum applicants with an unclear prospect to remain (see Chapter 4.1.2.2).

On 1 April 2012, the Professional Qualifications Assessment Act (BQFG) entered into force as part of the Recognition Act⁷². It covers more than 600

professions regulated by Federal law (BIBB 2017a). This Act created at the Federal level a general entitlement to have the equivalence of professional qualifications acquired abroad with a German reference profession evaluated. Aside from the Federation, all Länder have enacted laws on recognising academic qualifications acquired abroad for professions regulated at the Land level (teachers, early childhood educators, engineers, social workers, etc.). The Recognition Act has been a success:

“A first interim assessment released by the Federal Government in its Recognition Act Report 2017 shows that the Act is indeed a success: nine out of ten professionals who have acquired their qualification abroad are working after the recognition of their qualifications. The employment rate has risen considerably, by more than 50%. Following a successful recognition of the qualifications, gross monthly income rises by EUR 1,000 or 40% on average. The Recognition Act also makes a positive contribution to qualified migration: Roughly one out of ten recognition applications is filed from abroad. This option did not exist before the Recognition Act entered into force” (BMBF 2017a).

The demand for information and consultation services, which were introduced along with the Recognition Act in 2012, is high and has risen steadily in the last few years. In addition to the online portal www.anerkennung-in-deutschland.de⁷³ a hotline on the recognition of professional qualifications was launched in April 2012 and replaced in December 2014 by the central hotline ‘Living and Working in Germany’⁷⁴ of the Federal Office for Migration and Refugees and the Federal Labour Office. The hotline provides multi-language and personalised advice to skilled workers, students and apprentices who consider coming to Germany and informs them on issues such as entry into Germany, residence, qualification opportunities, the search for work, the recognition of professional qualifications and ways to learn German.

On 18 January 2016, amendments to the Professional Qualifications Assessment Act, which had become necessary under the provisions of the EU Professional Recognition Directive

cations Act.

73 There is also an app which provides the relevant information: <https://www.anerkennung-in-deutschland.de/html/de/app.php> (13 March 2018).

74 See <http://www.make-it-in-germany.com/de/fuer-fachkraefte/ueber-das-portal/kontakt/hotline> (8 February 2017).

71 See <http://www.bamf.de/DE/Infothek/Projekttraeger/Frauenkurse/frauenkurse.html?nn=1367536> (24 January 2017).

72 Assessment and Recognition of Foreign Professional Qualifi-

(Directive 2013/55/EU)⁷⁵, entered into force. The Recognition Acts of the Länder were amended at the same time (BMBF 2016: 14). The range of qualification documents which may be recognised was extended and an entitlement to quicker access to the examination necessary during the recognition procedure was implemented. This examination now has to take place within six months (Section 11 subs. 4 of the Professional Qualifications Assessment Act).

Among the multitude of integration measures at the Federal, Land and local level, the Migration Advisory Service for Adult Migrants (MBE) is particularly important. This programme, which is offered by the Federal Government, provides newly arrived immigrants who intend to stay and are older than 27 with individual advice for a limited period of time; it was established by the Residence Act in 2005 (Section 75 no. 9 in conjunction with Section 45 first sentence of the Residence Act). Migrants who have been living in Germany for some time but still “need to catch up in terms of integration” can also get advice under the Migration Advisory Service programme. This advice is usually provided in German, but often also in the language of their country of origin.⁷⁶ Due to the significant increase in the number of refugees over the last few years, the Migration Advisory Service was opened to persons with a suspension of removal and asylum applicants with a permission to remain who are likely to stay legally and permanently in Germany (good prospect to remain; see no. 2.3.6 of the Migration Advisory Service support guidelines of 20 July 2016). The Migration Advisory Service for Adult Migrants is funded by the Federal Government and implemented by the national associations of the non-statutory welfare and the Federation of Expellees (Bund der Vertriebenen).

In addition, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth funds the Youth Migration Services (Jugendmigrationsdienst, JMD) across Germany. These services are directed at juveniles aged between 12 and 27 and provide individual advice in cooperation with schools, companies which provide vocational training, integration course providers and other youth welfare institutions (JMD 2017a). From 2015 onwards, 24 JMD

locations provided specialised advice to young refugees and young people whose removal has been suspended in the framework of the pilot project ‘jmd2start – Youth Migration Services for Young Refugees’⁷⁷. On 1 January 2017, this project was expanded to all 465 JMD advice centres in Germany (JMD 2017b; BMFSFJ 2017d).

Labour market integration according to migrants’ professional qualification is another element of official integration support. For this, a system for the recognition of qualifications acquired abroad must be in place, and there must be structures for professional training and (subsequent) qualification. The programme ‘Integration through Qualification’ (IQ) has been in place since 2005. Its aim is raise the number of cases in which a professional qualification obtained abroad result in an employment “which is appropriate for the level of qualification, irrespective of the residence permit” (IQ Netzwerk 2018). On a regional level, the IQ-network consists of 16 Land networks and Land coordinators, which take co-responsibility for a total of 378 partial projects, such as recognition and qualification advice, qualification measures in the context of the Recognition Act and improving intercultural competence (IQ Netzwerk 2018). The programme is funded by the Federal Ministry of Labour and Social Affairs and the European Social Fund (ESF). The Federal Ministry of Education and Research and the Federal Labour Office act as cooperation partners. The administrative implementation is taken over by the Federal Office for Migration and Refugees.

In addition to the statutory integration programmes, the Federal Government supports projects for the social and societal integration of immigrants. They focus on enabling the migrants to arrive in their local communities, on providing opportunities for meetings between the migrants and the host community and on communicating values. Migrant organisations, whose umbrella organisations receive structural support by the Federal Office for Migration and Refugees, are important partners and help to create bridges. Beyond providing direct support to individual projects, the Federal Office for Migration and Refugees also promotes qualification measures, such as trainings for voluntary language teachers or for multipliers or ‘Houses of Resources’, which support “migrant organisations and other integration-oriented organisations in their work at the local level” by providing them with rooms,

75 Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 amending Directive 2005/36/EC on the recognition of professional qualifications and Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System (‘the IMI Regulation’).

76 See Brandt/Risch/Lochner (2015) for a detailed analysis of the Migration Advisory Service.

77 Homepage of the project: <http://www.jmd2start.de/> (27 March 2017).

qualification, advice, funds, help, contacts and co-operation opportunities (BAMF 2017k; see Chapter 6.2.2). The Federal Office for Migration and Refugees has been supporting 14 Houses of Resources across Germany since 2016 (BAMF 2016f).

The German Islam Conference (Deutsche Islam Konferenz, DIK) should be mentioned in this context, too. It provides a forum for dialogue between the Government and Muslim associations. The Conference was established in 2006 with the goal of promoting the integration of Islam as a part of Germany into German religious law and the participation of Muslims in German society. Ten umbrella associations have been partaking in the Conference since 2014. During the legislative period from 2013 until 2017, the German Islam Conference (DIK III) focussed on two issues, namely strengthening Islamic welfare services as well as clarifying the general organisational framework conditions for introducing Islamic pastoral care at the Federal level, in the Länder and in municipalities (military, correctional facilities, hospitals) (DIK 2014)⁷⁸. By the end of 2017, it was uncertain whether and in what form the German Islam Conference will continue to exist under a new Federal Government.

6.1.2 National developments

Statistics

Integration courses

Integration courses are provided nationwide by 1,736 providers (primarily adult education centres, private language and vocational schools, educational institutions, professional training centres, initiative groups, church and unaffiliated organisations). Between 2005 and end-2017, about 1.95 million people attended an integration course. In 2017, there were about 292,000 new enrolments. This was a slight decline from the preceding year (2016: 339,578; 2015: 179,398; Deutscher Bundestag 2018p: 9 et seqq.). Most new participants came from Syria (101,010), Iraq (27,493), Afghanistan (20,277), Eritrea (12,140) and Iran (11,956). The Federal budget earmarked about EUR 859 million for integration courses in 2017, a clear increase over the preceding

years (2016: about EUR 559 million; 2015: about EUR 269 million).

ESF-BAMF programme and vocational German language promotion

In 2017, there were 24,785 new participants in the ESF-BAMF programme. The decline in comparison to the preceding year (2016: 32,824) is largely due to the change in the promotion landscape, as the vocational German language promotion was introduced on 1 July 2016. At the end, the ESF-BAMF programme covered 124 regions in Germany, with one provider and its cooperation partners per region being entitled to offer ESF-BAMF courses. From 2009 until end-2017, a total of 228,986 participants took part in a total of 11,476 courses. Total costs across both funding periods amount to EUR 511.6 million, with EUR 492.9 million of this total being funded by the ESF and EUR 18.7 million by the Federal Government. The funding period for the ESF-BAMF programme ended on 31 December 2017. Thus, there will be no new ESF-BAMF courses in 2018, but rather, the ESF-BAMF programme is replaced by vocational German language promotion.

Vocational German language promotion was introduced on 1 July 2016 as a standard offer pursuant to Section 45a of the Residence Act by the Federal Ministry for Labour and Social Affairs together with the Federal Office for Migration and Refugees. In 2016, 282 courses with a total of 5,485 participants took place. The number of courses jumped to more than 4,900 in 2017, and more than 95,000 participants attended them for the first time.

Recognition of professional qualifications acquired abroad

In 2016⁷⁹, a total of 27,270 application procedures under the Recognition Act were processed. This is an increase of 22% over the preceding year (2015: 22,404 recognition procedures). As in the preceding years, most applications for the recognition of equivalence of professional qualifications dealt with medical and healthcare professions (2015: around 63% of all applications). Out of these, 8,034 applications referred to healthcare personnel, 7,569 to medical doctors, 957 to physiotherapists and 834 to dentists (StBA 2017). The most important countries

⁷⁸ Please see Stichs 2016, Stichs/Rotermund 2017, Volkert/Risch 2017 for more details on research publications prepared by the research centre of the Federal Office for Migration and Refugees in the framework of the German Islam Conference III.

⁷⁹ Figures for 2017 were not yet available at the time of writing (March 2018).

outside Europe where applicants had undergone their professional training were Syria (1,989 examined applications in 2016), the Philippines (720) and Egypt (474) (StBA 2017a).

Between the entry into force of the Recognition Act on 1 April 2012 and the end of 2016, a total of 90,756 applications for the recognition of professional qualifications acquired abroad were filed. This figure only covers professions for which the Federation is responsible. This means that the total number of recognition procedures conducted in Germany is considerably higher (Schmitz/Wünsche 2016).

Integration measures

Integration courses for second-literacy learners

In February 2017, the Federal Office for Migration and Refugees launched special ‘courses for second-literacy learners’ (Section 13 of the Ordinance on Integration Courses), which build on participants’ ability to read and write in their first language. In contrast to the courses for first-literacy learners, these courses offer first an “intensive introduction to the Roman alphabet, followed by the language course”. This is possible because participants “are literate in a non-Roman alphabet and familiar with written language, which is why they are able to learn the Roman alphabet more quickly than primary or functional illiterates” (BAMF 2017l: 5). Offering separate courses for second-literacy and first-literacy learners makes it possible to direct the course programmes better at the special needs of the participants (BAMF 2017l: 7).

The courses for second-literacy learners contain up to 900 language lessons and 100 orientation lessons. The language course consists of three elements: a basic course (300 lessons), which aims at reaching level A1 of the Common European Framework of Reference for Languages, an advanced language course A (300 lessons), which aims at level A2, and an advanced language course B (300 lessons), which aims at level B1 (BAMF 2017l: 9).

Expanding the orientation course from 60 to 100 lessons

On 1 August 2016, the orientation course was expanded from 60 to 100 lessons. In April 2017, an updated curriculum was released. The most important changes from the preceding curriculum are that the

importance of constitutional principles, basic rights and social values are systematically emphasised, that the content is geared towards value-based political education and support of efforts to participate in society, and that participants are encouraged to engage more intensively with the contents by linking them to their own lives and German society. Within the curriculum, the module on “People and Society” was given more than double its former weight. According to the responsible department of the Federal Office for Migration and Refugees, this decision was taken in order to respond to the growing importance of dealing with social, cultural and religious diversity and to emphasise the goal of peaceful coexistence. Religious tolerance and equal rights for men and women are particularly important issues in this context.

Ensuring an accelerated participation in integration courses

All integration course participants should start their courses six weeks to three months at the latest after they become entitled or obliged to participate. In order to reach this goal, the Federal Office for Migration and Refugees has started a pilot procedure to improve course management at 23 locations. In these pilot locations, future course participants take a centralised assessment test at an examination and registration facility of the Federal Office. Those who are obliged to attend an integration course are usually matched with a course provider who offers a course that is in line with the test result on the same day. Those who are entitled to attend are referred to a suitable course. If the course does not start within six weeks, the Federal Office shall put the participants in another course (obligatory attendance) or refer them to another course (entitlement to attendance). This procedure is based on the third statutory instrument amending the Ordinance on Integration Courses, which entered into force on 25 June 2017 (Section 7 subs. 3 or 5 respectively of the Ordinance on Integration Courses).

The matching and referral procedure aims to ensure that the integration course starts soon after the arrival in Germany. In fact, the time from the moment of obligation/entitlement to attend a course until participants start their integration course declined significantly. At the pilot locations, it now takes an average of 10.4 compared to an average of 13.9 weeks in Germany as a whole. Due to this, the procedure is to be introduced gradually across Germany from the second half of 2018.

Childcare during integration courses

The third statutory instrument amending the Ordinance on Integration Courses also reintroduced the possibility of childcare during integration courses independent of the type of course or a minimum number of children requiring care as a subsidiary offer to the standard offers by the municipalities (Section 4a subs. 2 of the Ordinance on Integration Courses). The promotion of childcare during integration courses had been terminated in 2014, as demand had declined considerably after the introduction of a legal entitlement to an adequate number of childcare places.

Restrictions on changing the integration course provider

The amendment to Section 14 subs. 4 of the Ordinance on Integration Courses (by the third statutory instrument amending the Ordinance on Integration Courses) has restricted course participants' ability to change the integration course provider after completing a course module. Until then, participants were allowed to change the provider "without any restrictions at their discretion". Now, this is only possible "in certain cases", for example due to "a move, a change between a part-time and a full-time course, the possibility of obtaining childcare or to start vocational training or work" (BAMF 2017m: 3).

Lapse of the right to attend an integration course

On 1 July, a new provision entered into force (Section 4 subs. 1 sentence 3 of the Ordinance on Integration Courses), according to which "the right to participate in an integration course lapses if the person entitled to attend has, for reasons for which he or she is responsible, not started the integration course at the latest one year after having enrolled with the integration course provider or interrupts the participation for more than one year" (BAMF 2017m: 4). This provision was already part of the Ordinance on the Integration Act in 2016, but did not enter into force until 1 July 2017.

Additional literacy courses in the Länder

Some Länder have launched literacy courses for asylum applicants who do not have a good prospect to remain and are therefore not entitled to attend integration courses. Rhineland-Palatinate, for

example, provided twelve courses for "refugees with deficits in reading and writing skills" at ten locations from July 2017. These courses are run by recognised course providers and were subsidised with EUR 90,000 by the Land (MFFJIV RLP 2017b).

Skills test 'MYSKILLS'

The Federal Labour Office and the Bertelsmann Stiftung have jointly developed a new skills test called 'MYSKILLS', which has been used in a pilot project in all Federal Labour Office agencies since 20 November 2017. The test aims at determining professional skills in cases where proof of such skills is lacking or diplomas have been lost. Refugees, for example, "often have professional skills", without being able to provide written proof. "It is difficult for Federal Labour Office and job centre staff as well as for potential employers to gauge these professional skills. This makes labour market integration more difficult" (Bertelsmann Stiftung 2017). The new test aims to close this gap and identify "professional knowledge, skills and professional experience" (BA 2017c: 2) with the help of a computer-aided test. The tests consist of about 120 profession-specific questions and takes four to five hours at most. Upon release, the test was available in six languages⁸⁰ and for the following eight professions: car mechatronics specialists, salespeople, metalworkers, carpenters, cooks, farmers, construction workers, painters. In 2018, an additional 22 professions are to be included so that the total number of professions that can be tested rises to 30 (Bertelsmann Stiftung 2017). The tests are automatically analysed and the results are passed on to the placement officer of the Federal Labour Office or the job centre, who will discuss the results and further steps (such as acquiring additional qualifications) with the candidate (BA 2017c: 3).

Programme "Integration through Qualification (IQ)"

The IQ recognition and qualifications consultation and IQ qualification measures are open to refugees and available to them for free. Roughly 50 sub-projects developed specific offers for refugees in 2017. They offer, for example, analyses of people's opportunities and their skills, coaching, support and mentoring, help in finding a suitable occupation or support during the process of setting up one's own business. Other sub-projects train and manage

80 German, English, Arabic, Farsi, Russian and Turkish.

voluntary helpers or offer advice to companies which provide internships or qualification measures to refugees.

In 2017, the IQ contact points have provided consultation to 42,624 people (2016: 41,325). Since many of those interested contacted the points several times, overall consulting is far higher, with a total of 243,011 consultation contacts. Advice is provided on 565 different reference professions, with almost 10% each focussing on teachers and engineers. Callers had obtained qualifications in a total of 187 countries, with 20.1% of them coming from Syria (Liedtke/Vockentanz 2018b). Overall, a total of 146,205 persons received advice at IQ contact points between their launch on 1 August 2012 and 31 December 2017.

Pilot project 'Start-Up Your Future'

On 6 June 2017, the pilot project 'Start-Up Your Future' was launched. It is run by Wirtschaftsjunioren Deutschland (WJD), an association of young entrepreneurs and managers, and funded by the Federal Ministry of Economics and Energy. The project aims, in its own words, to "support refugees in Berlin-Brandenburg by offering mentorships for business start-ups and enabling them to become self-employed or entrepreneurs. Voluntary mentors will support refugees during this process. These mentors are entrepreneurs, future entrepreneurs, managers or young businesspeople who are willing to share their network and have the entrepreneurial spirit" (Startupyourfuture.de 2017).

Information portal handbookgermany.de

In cooperation with refugees, Deutsche Telekom and Adobe Systems and with support from the Federal Government Commissioner for Migration, Refugees and Integration, Minister of State Aydan Özoğuz, 'Neue deutsche Medienmacher' ('New German Media Professionals'), a journalist network, launched an information portal for refugees at the beginning of 2017: www.handbookgermany.de The website is available in Arabic, English, Farsi and German and contains information on issues such as work, family reunification, education, women's rights, registration, housing and living with disabilities in Germany in order to provide orientation during the first few years of stay. It provides low-threshold offers such as explanatory videos by refugees on complex issues and content from other cooperation partners such

as Deutsche Welle, government authorities, associations and initiatives (Charta der Vielfalt 2017).

Welcome Guides

In the framework of an initiative by the Federal Ministry of Economics and Energy and the German Confederation of Skilled Crafts, about 170 'Welcome Guides' ('Willkommenslotsinnen und -lotsen') have been supporting small and medium-sized enterprises in employing and training refugees since spring 2016. On 28 September 2017, a new funding guideline entered into force, which allows large companies to use the services of the Welcome Guides, too. The Welcome Guides provide advice on legal framework conditions, regional support offers or language courses and help companies to find suitable applicants. "The aim is to raise awareness about the potential lack of skilled workers among entrepreneurs and to convince them that refugees may be a help for any company, be it as trainees or (future) skilled workers" (BMW 2018). "Since the launch of the programme in March 2016, the Welcome Guides have helped about 7,700 refugees to get an internship (3,878) or an opportunity to visit with a company (542), to start with an initial qualifications course (1,156) or a vocational training programme (1,344) or even to get a regular job (766)" (BMW 2018).

500 LandInitiativen

In 2017, the Federal Ministry of Food and Agriculture (BMEL) launched the nationwide programme '500 LandInitiativen' ('500 countryside initiatives'). Initiatives which "work towards the long-term integration of refugees in rural areas" had until 31 May 2017 to apply for financial support ranging from EUR 1,000 to EUR 10,000 (BMEL 2017a). A total of more than 800 applications were made, with 706 out of them being granted (BMEL 2017b). The money helps to fund necessary equipment and expenditure for voluntary initiatives. The initiative is part of the 'Federal Rural Development Scheme'.

Programme 'NRWege ins Studium' at 30 universities

The programme 'NRWege ins Studium' ('pathways into university studies in North Rhine-Westphalia') was launched in North Rhine-Westphalia in January 2017. 30 universities across the Land participate and offered specific courses and advice to 2,000 refugees

who were interested in taking up university studies. The programme was developed jointly with the German Academic Exchange Service (Deutscher Akademischer Austauschdienst, DAAD) and funded by the North Rhine-Westphalian government with EUR 30 million per year. The funds are to be used for additional university staff to advise and support students in order to provide relief to regular advisory centres for foreign students. “In addition, supplementary courses for more than 700 students are to be launched to help them at the beginning of their studies and ensure that they can successfully graduate” (DAAD 2017).

Integration Acts at the level of the Federal Länder

On 1 January 2017, the Bavarian Integration Act (BayIntG)⁸¹ entered into force in Bavaria. Thus, Bavaria became the fourth Land – alongside Baden-Württemberg, Berlin and North Rhine-Westphalia – to adopt an Integration Act at the Land level. Other Länder released ‘integration plans’ (Hesse and North Rhine-Westphalia) or ‘integration concepts’ (Rhineland-Palatinate) in 2017 or announced that they were developing an integration concept (Mecklenburg-Vorpommern).

The new Bavarian Integration Act states that its goals are an “indispensable respect for the guiding culture (Leitkultur)” and “integration efforts” by the immigrants; at the same time, the aim of the Act is also integration support (Section 1 of the Bavarian Integration Act). The Act provides for several sanctions with respect to the expected integration efforts: Persons who have not achieved the “minimum command of German which is to be expected in view of the support granted” may, under certain circumstances, be obliged to repay an adequate share of the support expenses and bear interpreter costs for administrative procedures themselves, “subject to other provisions under applicable funding guidelines concerning an adequate repayment of support expenses” (Article 4 para 3 and 4 of the Bavarian Integration Act). In the case of and open rejection of the legal and value order enshrined in the constitution, the person concerned may be obliged to participate in basic courses on the legal and value order (Article 13 of the Bavarian Integration Act). Violations of the constitutional order may be punished by fines of up to EUR 50,000 (Article 14 of the Bavarian

Integration Act)⁸². Benefits under Land law will only be granted to persons whose identity has been reliably determined (Article 12 of the Bavarian Integration Act). The Act has also resulted in amendments to other Land legal provisions, such as the Act on Police Tasks (Polizeiaufgabengesetz, PAG): For example, accommodation facilities for asylum applicants and locations where persons who irregularly reside in Germany are staying are now classified as dangerous locations. This entitles police officers to conduct identity controls and to search rooms if this is necessary to avert an immediate risk (Bayerischer Landtag 2016a: 24; Article 17a of the Bavarian Integration Act; Article 13 para 1 no. 2 letter c of the Act on Police Tasks; Article 23 para 3 no. 3 of the Act on Police Tasks).

The main difference to the three other Land Integration Acts is that the Bavarian Integration Act focuses on legal integration obligations and sanctions for their violation rather than on measures to promote integration (Parlamentarischer Beratungsdienst Brandenburg 2016). In particular, the concept of a predominant “guiding culture” is views critically by associations, trade unions, churches and the opposition in the Bavarian Land parliament (DGB Bezirk Bayern 2016: 3; Freie Wohlfahrtspflege Landesarbeitsgemeinschaft Bayern 2016; Bayerischer Flüchtlingsrat 2016).

The parliamentary groups of SPD and Alliance 90/The Greens filed suits against the Bavarian Integration Act with the Bavarian Constitutional Court on 2 May 2017. The Greens hold that the Act “violates the hierarchy of competences under the Basic Law. Since the Federal Parliament has already enacted an Integration Act and a Residence Act, no Land acts which run counter to these Federal acts may be adopted” (Bündnis 90/Die Grünen Landtag Bayern 2017b: 1). The SPD claims that the Bavarian Integration Act violates the requirement of clarity in several places. This requirement states that laws should be formulated in such a way that “affected parties can understand the legal situation and courts can monitor the application of the law by the administration”. Among other things, this would refer to the term “guiding culture”, which is used in the Integration Act (BayernSPD-Landtagsfraktion 2017: 26 et seqq.).

81 Bavarian Integration Act (BayIntG) of 13/12/2016 (GVBl. p. 335), BayRS 26-6-A.

82 The provisions of Article 13 and 14 of the Bavarian Integration Act apply to everybody, not just to foreigners (Kohnen 2017).

6.1.3 Developments referring to the EU

Launch of a Franco-German Integration Council

On 7 November 2017, the Franco-German Integration Council (DFIR) was established. Its goal is to “keep the issue of integration on the German-French agenda and enable a more detailed exchange about the multiple experiences in both countries” (BMI 2017g). The Franco-German Integration Council is to meet at least annually ahead of the meetings of the Franco-German Council of Ministers and is to identify “successful measures” and give impulses for European cooperation (BMI 2017g). The following foci were set for the first three years: education and equal opportunities, labour-market integration, fight against discrimination and radicalisation, promotion of social cohesion, issues of accommodation and urban planning (BMI 2017g).

New EU Skills Profile Tool

On 20 June 2017, the EU Commission launched its ‘EU Skills Profile Tool for Third Country Nationals’, which aims to complement existing national instruments. The off- and online web editor⁸³ aims to make it possible for asylum seekers, beneficiaries of international protection and other non-EU nationals “to present their skills, qualifications, and experiences in a way that is well understood by employers, education and training providers and organisations working with migrants across the whole European Union” (KOM 2017f). The instrument will help non-EU nationals and organisations to “identify individuals’ specific needs for integration into the labour market” (KOM 2017f), in particular “education, training, employment and migration/ integration organisations, national or regional governments” (KOM 2017g). The instrument will be available in all official languages of the EU and six non-EU languages (Arabic, Farsi, Pashto, Sorani, Somali and Tigrinya) and will be completed by the non-EU nationals together with an employee of one of the organisations listed above (KOM 2017g).

83 The Skills Profile Tool is available from the following link: <http://skpt-test.eu-west-1.elasticbeanstalk.com/#/>.

6.2 Anti-discrimination efforts

6.2.1 Background and general context

Anti-discrimination laws and policies in Germany are based on Articles 1 and 3 of the Basic Law (Grundgesetz, GG). Article 1 of the Basic Law obliges the state to respect and protect human dignity, which is inviolable. Article 3 para 1 of the Basic Law spells out the basic right of equality before the law, which binds the legislative, executive and judiciary powers. “Pursuant to the judgments of the Federal Constitutional Court, the basic right of equality means that materially equal facts and situations should be treated equally and unequal facts and situations, unequally” (BPB 2017). Article 3 para 2 and 3 of the Basic Law define which facts are no reasons for favouring or disfavouring a person (non-discrimination principles). Men and women shall have equal rights (Article 3 para 2 of the Basic Law), and no person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions or be disfavoured because of disability (Article 3 para 3 of the Basic Law). “While it is admissible to treat German nationals and foreigners differently, the different treatment must still meet the conditions of the right of equality” (BPB 2017).

Article 3 para 2 of the Basic Law additionally states that the “state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist”.

On 18 August 2006, the General Act on Equal Treatment (AGG) entered into force. It provides a comprehensive legal framework to protect citizens against discrimination not only by the state (as set out in the Basic Law), but also by private agents (such as employers, landlords or owners of clubs or restaurants). This Act transposed four European Directives into German law:

- the Anti-Racism Directive (Directive 2000/43/EC)⁸⁴
- the Employment Equality Framework Directive (Directive 2000/78/EC)⁸⁵

84 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.

85 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. “With this Directive, the European

- the Gender Directive Civil Law (Directive 2004/113/EC)⁸⁶
- the Gender Equality in Employment and Occupation Directive (Directive 2006/54/EC)⁸⁷

The purpose of the Act is to prevent or to stop discrimination⁸⁸ on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation (Section 1 of the General Act on Equal Treatment).

With the entry into force of the General Act on Equal Treatment, the Federal Anti-Discrimination Agency (ADS) was established with the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (Section 25 of the General Act on Equal Treatment). It provides independent support to people who believe that they have been discriminated against for one of the reasons listed in Section 1 of the General Act on Equal Treatment by informing them about their legal entitlements and available legal procedures, by handing them over to other advisory centres and by supporting them in trying to achieve a settlement (Section 27 subs. 2 of the General Act on Equal Treatment). In addition, the Federal Anti-Discrimination Agency engages in public relations efforts, takes measures to prevent discrimination for the reasons set out in Section 1 of the General Act on Equal Treatment and conducts scientific research concerning such discrimination (Section 27 subs. 3 of the General Act on Equal Treatment). Every four years, the Federal Anti-Discrimination Agency and the Federal Government and Bundestag Commissioners shall report to the Bundestag on discrimination on the grounds set out in Section 1 of the General Act on Equal Treatment and give recommendations on how to remove and prevent such discrimination (Section 27 subs. 4 of the General Act on Equal Treatment). The third such joint report was presented by the end of

September 2017 (ADS 2017a). The Federal Anti-Discrimination Agency shall adequately include in its efforts non-governmental organisations and institutions which work to prevent discrimination on the grounds set out in Section 1 of the General Act on Equal Treatment at the European, Federal, Land or regional level (Section 29 of the General Act on Equal Treatment).

Alongside the Federal Anti-Discrimination Agency, there are state, state-promoted and/or non-governmental anti-discrimination institutions in numerous Länder, which not only provide advice and information, but in some cases also equality, diversity, anti-discrimination and anti-racism trainings – increasingly to the administration and the police, too. Since January 2015, numerous advisory initiatives have been supported by the Federal programme “Live Democracy! Active against Right-wing Extremism, Violence and Hate” (see below).

In 2016, the Federal Government also presented its “Strategy to Prevent Extremism and Promote Democracy” (BMFSFJ/BMI 2016). Trigger for doing so was the observation that “radicalisation tendencies can be seen reaching right into the heart of society” and that “increasing extremism” would be expressed for example, “in the rising number of acts of political violence, especially right-wing attacks on refugee centres, in ever more blatant, hate-filled and racist agitation in social media or in the rise of political movements which question the values of the Constitution” (BMFSFJ/BMI 2016: 7). In order to “oppose extremist tendencies continuously and sustainably and to stand up for a peace-loving, democratic society”, a joint strategy was released which centres on a combination of “security-oriented, preventive and democracy-promoting measures” (BMFSFJ/BMI 2016: 7). There is an express mention of the work of the NSU Investigation Committees⁸⁹, which have

Union aims to create a general framework to combat discrimination for reasons of race or belief, disability, age or sexual orientation in the field employment and occupation” (ADS 2015: 4).

86 Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

87 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

88 An evaluation of the General Act on Equal Treatment from 2016 proposed replacing the German term “Benachteiligung” by “Diskriminierung” (“discrimination”) in order to “comply with the goals of the European anti-discrimination directives and strengthen legal certainty and improve people’s awareness by using more precise terms” (ADS 2016: 25).

89 At the end of 2011, it came to light that a right-wing terrorist group, the so-called “Nationalsozialistischer Untergrund” (“National-Socialist Underground”, NSU) had committed ten murders, several bomb attacks and a number of bank robberies in Germany (BpB 2013). Even before the legal proceedings started on 6 May 2013 in front of the Higher Regional Court of Munich, a first parliamentary investigation committee on the NSU was established on 26 January 2012. Its mandate was to “draw conclusions for the structure, cooperation, powers and qualification of the security and investigative authorities and for an effective fight against right-wing extremism and make adequate recommendations” (Kleffner/Feser 2013). On 22 August 2013, the committee presented its final report (Deutscher Bundestag 2013a), which “documents mistakes and errors of the security authorities and makes reform proposals” (Kleffner/Feser 2013). On 25 November 2015, a second parliamentary investigation committee on the NSU started its work. It presented its final report on 27 June 2017 (Deutscher

shown that “a more intense, more effective confrontation with racism and right-wing extremism is needed, not least to combat the long underestimated dangers of right-wing terrorism” (BMFSFJ/BMI 2016: 7).

Since 2012, the Advice Centre on Radicalisation is set up at the Federal Office for Migration and Refugees, which can be approached by anyone “who observes an islamist-motivated radicalisation in their personal environment” (BAMF 2017a). Relatives, friends or for example also teachers may contact the staff at the hotline of the Advice Centre, “which record the cases and provide individual and demand-oriented counselling together with the non-profit organisations. There are almost 70 persons involved on site nationwide. Among the employees are social pedagogues, political scientists, scholars of Islam and psychologists, all trained accordingly to conduct the counselling interviews, to develop consulting strategies and put them into practice with those seeking for counsel. Counselling is provided in the languages German, Turkish, Arabic, English, Farsi, Russian and Urdu” (BAMF 2018e; see also an evaluation of the Advice Centre on Radicalisation, Uhlmann 2017).

6.2.2 National developments

Attacks on refugees, refugee shelters and refugee support networks

In 2017, the Federal Criminal Police (BKA) registered more than 2,350 (2016: 3,500) politically motivated crimes against refugees, their shelters, support organisations and voluntary helpers, from insults to grievous bodily harm, arson or attempted murder (Deutscher Bundestag 2018e: 7 et seq.). With few exceptions, the offences were classified as right-wing politically motivated crimes⁹⁰ (see Chapter 2.2). As of 9 February 2018, investigations into 1,172 crimes led to 1,498 suspects, with the breakdown as

follows: 1,337 suspects were investigated in connection with 1,065 crimes against asylum applicants, 121 in connection with 73 registered attacks on asylum seekers' shelters and 40 in connection with 34 crimes against support organisations or volunteers (Deutscher Bundestag 2018e: 4).

New National Action Plan against Racism

On 14 June 2017, the Federal Government adopted a new ‘National Action Plan against Racism’ (NAP), which completely re-structures the National Action Plan⁹¹ of 2008 and extends it to include measures against “homo- and transphobia” (BMI 2017h). The National Action Plan describes that the Federal Government follows these aims:

- “Anyone affected by racist discrimination, violence or other ideas of inequality needs protection and solidarity. Government efforts and measures by public institutions and social organisations shall strengthen them and include them in developing solutions
- to abolish racism and racist discrimination and allow a life free of discrimination in a democratic, diverse and pluralist society,
- to intensify the discussion of ideas of inequality, the fight against and reduction of racism and the related discriminations and prejudices,
- to promote engagement, moral courage and the ability to constructively engage in conflict and to strengthen a diverse, democratic society and its values in everyday life,
- to develop or initiate the necessary measures on the basis of international standards and human rights, and
- continuously sharpen public awareness for the issue of equality and equal rights at all social levels” (BMI/BMFSFJ 2017a: 6 et seq.).

The National Action Plan repeatedly emphasises the role of ‘institutional racism’, which means that “conscious, unconscious, indirect and direct discrimination may take place at state and private institutions” (BMI/BMFSFJ 2017a: 9). The Federal Government states that it will intensify its efforts to deal with this problem and “turn off” discriminatory institutional procedures (“operative procedures, procedural

Bundestag 2017k).

90 “Crimes are classified as right-wing politically motivated if the circumstances of the crime and/or the perpetrator’s stance suggest that they can be reasonably assumed to have been perpetrated on the grounds of a “right-wing” political orientation. The act as such need not necessarily aim at suspending or eliminating an element of the free, democratic organisation of the state (extremism). In particular, this applies to offences perpetrated in full or in part for nationalist, racist, social-darwinist or national-socialist reasons. These politically motivated crimes are to be classified as right-wing extremist” (Landtag Baden-Württemberg 2016: 2).

91 In 2008, the Federal Republic of Germany transmitted its ‘National Action Plan of the Federal Republic of Germany to Combat Racism, Xenophobia, Anti-Semitism and Related Intolerance’ to the UN High Commissioner for Human Rights (BMFSFJ 2017: 6).

rules, routine actions and processes”) (BMI/BMFSFJ 2017a: 9).

The National Action Plan originally stems from the ‘Programme of Action of the World Conference against Racism’ adopted in 2011 in Durban (South Africa), in which the United Nations committed themselves to “prepare national action plans against racism in consultation with national human rights institutions, institutions combating racism and civil society” (BMFSFJ 2017: 6). The new National Action Plan is based on the CDU/CSU and SPD coalition agreement of 2013 and is to be understood, i.e., as a “response to the serial murders by the so-called Nationalsozialistischer Untergrund (NSU)” and the recommendations of the parliamentary investigation committees, similar to the ‘Strategy to Prevent Extremism and Promote Democracy’ (BMI/BMFSFJ 2017a: 6).

New National Programme to Prevent Islamist Extremism (NPP)

On 29 March 2017, the Federal Government adopted a new ‘National Programme to Prevent Islamist Extremism’ (NPP). It builds on the ‘Strategy to Prevent Extremism and Promote Democracy’ and aims to meet the special challenges of Islamist extremism throughout society (BMI 2017p). EUR 100 million have been earmarked for the NPP in the budget for 2018 (BMI 2017q: 7). Based on the key elements mentioned in the NPP, an “effective national programme aimed at Islamist extremism and including additional foci” is to be developed. These key elements are:

- Places of prevention – municipalities, families and the social environment, educational institutions and mosque communities;
- Prevention on the internet – support “measures which raise awareness among users, multipliers and platform providers of dissemination strategies and mechanisms of Islamist propaganda”, strengthen users’ ability of judgement and discourse, for example by target-group specific information on civic education, develop guidelines for communication for alternative narratives to counteract extremist propaganda, and monitor Islamist content;
- Prevention through integration – language courses, access to the labour market and to labour market access measures for refugees;
- Prevention and deradicalisation in prisons and in probation assistance – expand efforts to help

radicalised people leave the scene and support efforts to establish Muslim chaplaincy in prisons;

- Increasing effectiveness – expand research, make additional efforts to combine measures, improve the risk management, engage in international and European exchange and cooperation (BMI 2017q: 2 et seq.).

The NPP is based on existing prevention schemes and aims to conclude a “Pact for Prevention” together with the Länder, “national associations of local authorities, security authorities, religious communities and civil-society actors” (BMI 2017q: 2, 6). The Federal Ministry of the Interior and the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth jointly lead the programme (BMI 2017q: 7).

Federal programme ‘Live Democracy! Active against Right-wing Extremism, Violence and Hate’

The Federal programme ‘Live Democracy!’⁹², which was launched in 2015 and is run by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, was considerably expanded in 2017. The amount earmarked for it was doubled, from EUR 50.5 million in 2016 to EUR 104.5 million in 2017 (BMFSFJ 2018a; BMI/BMFSFJ 2017: 22). In a first step, the programme distinguishes between ‘sustainable structures’ and ‘pilot projects in the thematic fields’. The sustainable structures include funding for 265 municipalities throughout Germany (‘partnerships for democracy’), support for mobile, victim and exit strategy counselling in the 16 Länder (‘Federal State Democracy Centres’) and support for the “professionalisation and development” of 35 nationwide NGOs (‘structural development of nation-wide NGOs’) (BMFSFJ 2018b). In the latter, the following issues were newly included during 2017: “prevention of Islamophobia and empowerment of affected groups; prevention of racism and empowerment of Black people; support for diversity and anti-discrimination efforts in companies; prevention of discrimination of lesbians and gays and empowerment of affected groups” (BMI/BMFSFJ 2017a: 28).

⁹² The website of the Federal programme contains the support guidelines for individual years and more detailed information: <https://www.demokratie-leben.de> (13 March 2018).

The pilot projects include seven thematic areas:

- Selected phenomena of group-focused enmity and approaches to strengthening democracy in rural areas (racism and racial discrimination, current forms of anti-Semitism, antigypsyism, current forms of Islamophobia, homophobia and transphobia, anti-discrimination and early prevention among preschool children, strengthening democracy in rural areas),
- Prevention of radicalisation,
- Civic engagement and diversity at the workplace,
- Strengthening democracy in the educational sector,
- Living together in a diverse society,
- Strengthening civic engagement on the web – against online hate speech,
- Prevention and deradicalisation in prison and probation (BMFSFJ 2018b).

The Federal Office for Family and Civil Society Duties (Bundesamt für Familie und zivilgesellschaftliche Aufgaben, BAFzA) is responsible for the administrative implementation of ‘Live Democracy!’. The German Youth Institute (Deutsches Jugendinstitut, DJI) will evaluate the programme and provide scientific monitoring for individual elements. The programme will run until end-2019.

Third report of the Federal Anti-Discrimination Agency

At the end of September 2017, the Federal Anti-Discrimination Agency and the commissioners of the Federal Government and the Bundestag, whose area of competence is concerned, released their third joint report (ADS 2017a). Pursuant to the General Act on Equal Treatment, this report is to be produced every four years (Section 27 subs. 4 of the General Act on Equal Treatment).

It deals with discrimination on the grounds listed in the General Act on Equal Treatment and finds that discrimination is a widespread phenomenon in Germany (ADS 2017a: 14). The report draws several conclusions from its empirical findings, for example:

- Improve “access to protection against discrimination and enforcement of rights for affected persons” (ADS 2017a: 21), which would include a right for organisations to take legal action that would enable anti-discrimination organisations to bring test cases,
- “Reconsider [the Federal Government’s] resistance against the draft of the fifth EU Directive on

Equal Treatment in order to ensure equal treatment for discrimination on the grounds of age, sex, disability, religion/belief or sexual orientation” (ADS 2017a: 22),

- Expand the area of application of the General Act on Equal Treatment by adopting a ban on discrimination with regard to government action (ADS 2017: 22),
- “Promptly increase the number of state and non-state anti-discrimination agencies at the Land and local level across Germany” (ADS 2017a: 22).

Hate speech in social media

On 1 October 2017, the Network Enforcement Act (NetzDG)⁹³ entered into force. According to the Federal Ministry of Justice and Consumer Protection (BMJV), the Act aims to “combat hate crime and criminal fake news on social media platforms” (BMJV 2017c: 1). It is directed at telemedia service providers which run internet platforms for commercial purposes and have more than two million registered users in Germany (Section 1 of the Network Enforcement Act). The Act contains the following material amendments:

1. Providers must provide a semiannual, public report about their treatment of criminal content and complaints if there are more than 100 complaints about unlawful content during a calendar year (Section 2 subs. 1 of the Network Enforcement Act),
2. Providers must introduce transparent, easily recognisable and always accessible complaint procedures; this includes additional provisions concerning the period for examining, deleting and storing criminal content (Section 3 of the Network Enforcement Act),
3. Fines for providers who “do not or not properly establish an efficient complaint management, particularly if they do not or not completely delete criminal content or do not delete it in a timely manner” (BMJV 2017d). Any regulatory offence may be punished by a fine of up to EUR five million (Section 4 of the Network Enforcement Act),
4. Providers must appoint a contact in Germany to whom official notices may be served, for example during legal proceedings (Section 5 subs. 1 of the Network Enforcement Act), and a contact for prosecution authorities (Section 5 subs. 2 of the Network Enforcement Act).

⁹³ Act to Improve Enforcement of the Law in Social Networks, BGBl. Part I p. 3352.

In 2017, seven companies – Facebook, Youtube, Google+, Instagram, Pinterest, Soundcloud and Twitter – appointed contacts to whom official notices may be served (Deutscher Bundestag 2018f: 3).

The Act met with partially significant criticism, not least from the opposition, which said that “private companies were forced by law to conduct over-blocking and delete expressions of opinion which were allowed under criminal law” (Reuter 2018).

Compensation to victims of extremist violence

Beyond compensation under the Crime Victims Compensation Act (OEG)⁹⁴, victims of extremist or terrorist crime may claim two other forms of state compensation. The budget contains two items for compensation to victims of extremist violence and terrorist crime; for each of them, EUR 700,000 were earmarked in 2017. Payments from these budget items will “supplement repressive and preventive measures to combat extremism” (BMI/BMFSFJ 2017a: 20 et seq.). Moreover, “payments to the victims [...] will be claimed back from the perpetrators, up to civil-law proceedings and enforcement, in order to ensure that criminals are held responsible under civil law and do not enjoy a financial benefit from the fact that the victims can claim state compensation” (BMI/BMFSFJ 2017a: 21).

Projects of the Federal Anti-Discrimination Agency

Even before 2017, the Federal Anti-Discrimination Agency successfully convinced the Länder Baden-Württemberg, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Lower Saxony, Rhineland-Palatinate, Schleswig-Holstein and Thuringia to join a ‘Coalition Against Discrimination’ and pursue a joint anti-discrimination agenda. In 2017, Saxony joined the Coalition Against Discrimination, which was officially launched on 23 June 2017 with the signing of the declaration of intent entitled “Campaign in Support of a Non-Discriminatory Society”. “Within the scope of this campaign, the Federal Anti-Discrimination Agency sponsors counselling centres nationwide and strengthens their public relations work” (ADS 2017b).

Second report of the Independent Expert Committee on Anti-Semitism

In April 2017, the Independent Expert Committee on Anti-Semitism released its second report on “Anti-Semitism in Germany – Recent Developments” (BMI/UEA 2017). It lists five key recommendations:

1. Appointment of an anti-Semitism commissioner and establishment of a regular independent expert committee
2. Stringent identification, publication and punishment of anti-Semitic crimes
3. Steady support for organisations that seek to prevent anti-Semitism
4. Establishment of a regular committee by the Federal Government and the Länder
5. Long-term support of research on anti-Semitism (BMI/UEA 2017: 14).

The expert committee consists of nine researchers and the heads of remembrance, educational, prevention and empowerment institutions (Deutscher Bundestag 2017t: 17 et seq.). The reports are based on a decision taken by the German parliament on 13 June 2013, which called for “continually fighting decidedly against anti-Semitism and promoting Jewish life in Germany” and was the trigger for the establishment of the second Independent Expert Committee (BMI 2017r).

⁹⁴ Act on Compensation to Victims of Violent Crime.

7 Irregular migration, smuggling of migrants and border control

7.1 Irregular migration and smuggling of migrants

7.1.1 Background and general context

There are numerous reasons for and types of irregular migration and unauthorised residence. These terms cover unauthorised entry into Germany and subsequent irregular residence as well as legal entry followed by unauthorised residence, for example because the person concerned does not leave the country even though their residence title has expired. Persons whose asylum application has been rejected and who are therefore obliged to leave are considered to be irregularly residing, too. Persons with a suspension of removal are obliged to leave the country. However, their removal is currently impossible in fact or in law and has therefore been suspended (see Section 60a subs. 2 first sentence of the Residence Act).

Irregular migration to and unauthorised residence in Germany are managed, on the one hand, by using preventive and migration control measures, for example during the visa process and in securing external borders, and on the other hand, by measures promoting return or enforcing removals. In addition, there are pragmatic responses to the situation of those persons who reside irregularly in Germany, but whose obligation to leave cannot be enforced or those persons whose residence is unknown to the authorities⁹⁵. This includes granting a suspension of removal or changing from a suspension of removal

to a residence title (Sections 18a, 25a and 25b of the Residence Act), which can be possible under certain preconditions, or facilitating access to school education and health services for irregularly residing persons (see Hoffmeyer-Zlotnik 2017; Grote 2015).

While the number of registered foreigners who are obliged to leave is captured in the Central Register of Foreigners, it is not possible to reliably determine the number of irregularly residing persons who have had no contact with the authorities; their number can only be estimated and extrapolated. For many years, the CLANDESTINO project has provided reliable estimates of the number of irregularly residing third-country nationals (excluding persons with a suspension of removal). Based on the method used, it was possible for the last time for the year 2014 to provide an estimation of the number of irregularly residing third-country nationals who have no contact with the authorities, their number being estimated at 180,000 to 520,000. As the number of asylum seekers jumped in 2015, leading to changes in registration methods and possible double registrations, the researchers have not been able to provide reliable estimates for later years (Vogel 2016: 5 et seq.).

Unauthorised entry and residence are crimes that are generally punishable by fine or imprisonment. However, this does not apply to unauthorised entrants who apply for asylum immediately after having entered the country (see Article 31 para 1 of the Geneva Convention). Aiding and abetting any unauthorised entry/residence in exchange for a pecuniary advantage or the promise of a pecuniary advantage, or repeatedly, or for the benefit of several foreigners is also punishable by law (people smuggling, Section 96 subs. 1 of the Residence Act). Smuggling for gain or as an organised gang, carrying a firearm during the smuggling process, causing danger to life or limb or even causing the death of a smuggled person will lead to a significantly stricter punishment (Sections 96 and 97 of the Residence Act).

External controls (e.g., via the visa process and external border controls, see Chapter 7.2), as well as a

⁹⁵ Employees of educational institutions are exempted from the obligation of public institutions to report on irregularly staying persons to the foreigners' authorities (Section 87 of the Residence Act). Medical Doctors, members of recognised medical professions and "the administrative staff of public hospitals involved in accounting, as well as psychologists, family, educational and youth counsellors, pregnancy conflict counsellors, addiction counsellors, social workers and social educators and all employees in public youth welfare" would in turn "violate their legal professional duties when they disclose personal data entrusted to them by a person without papers to the foreigners' authorities" (Caritas NRW 2018).

Table 6: Persons who are obliged to leave and persons whose removal has been suspended on 31 December of each year (2012 - 2017)

	31/12/2012	31/12/2013	31/12/2014	31/12/2015	31/12/2016	31/12/2017
Number of persons who are obliged to leave	118,347	131,598	154,191	204,414	207,484	228,859
Of these: number of persons whose removal has been suspended	85,344	94,508	113,221	155,308	153,047	166,068

Source: Central Register of Foreigners

system of internal controls are part of the German system for managing migration and preventing irregular migration (Schneider 2012: 50 et seqq.). At the national level, the Joint Analysis and Strategy Centre for Illegal Immigration (GASIM) plays a key role. It gathers and analyses data on irregular migration and related types of crime provided by the participating authorities⁹⁶ with the aim of generating information, analysis, a strategic basis and early warning signs. The Federal Police obtains information abroad in particular by using border police liaison officers and sending document and visa experts to selected countries of origin and transit. The same applies to liaison staff and liaison officers from the Federal Office for Migration and Refugees in selected EU Member States and third countries. In addition, knowledge is gained from the cooperation with FRONTEX and the European Police Office (Europol), as regular and/or topic-specific joint evaluations are exchanged and a variety of networks are used to exchange information. Within Europol, a “European Migrant Smuggling Centre” was created in February 2016. This centre supports the Member States in their fight against migrant smuggling by the exchange of information as well as by initiating bi- and multilateral investigations (Europol 2018). Moreover, Europol supports the cross-border fight against crime, for example by joint investigation teams of several Member States and Europe-wide days of action (Deutscher Bundestag 2017l: 5).

7.1.2 National developments

Statistics – Persons who are obliged to leave

As of 31 December 2017, 228,859 persons were obliged to leave (see table 6). Within this group, the removal of 166,068 persons was suspended. Among those obliged to leave, 118,704 were rejected asylum seekers (Deutscher Bundestag 2018g: 77 et seqq.)⁹⁷.

Statistics – persons with a right of residence

As of 31 December 2017, 4,261 persons held a residence permit for well integrated juveniles and young adults whose removal has been suspended pursuant to Section 25a subs. 1 of the Residence Act. A total of 946 persons held a residence title as either parents or minor children of such persons (Section 25a subs. 2 of the Residence Act). A total of 1,782 persons had been issued with a residence permit on the grounds of them being well integrated pursuant to Section 25b subs. 1 of the Residence Act. A total number of 671 persons had been granted a residence permit due to them being family members of such persons (Section 25b subs. 4 of the Residence Act; Deutscher Bundestag 2018g: 31 et seqq.).

Cuts in benefits for lack of cooperation

In a judgment dated 12 May 2017⁹⁸, the Federal Social Court found that it was admissible under the constitution to cut benefits to asylum seekers “to the irrefutably necessary” level. Benefits under the Act on Benefits for Asylum Seekers may be reduced if, for example, asylum applicants do not meet

⁹⁶ The following authorities are involved in GASIM: the Federal Police, the Federal Criminal Police Office, the Federal Office for Migration and Refugees, the Financial Investigation Office for Clandestine Employment (Finanzkontrolle Schwarzarbeit – FKS) of the Federal Customs Administration, the Federal Intelligence Service, the Federal Office for the Protection of the Constitution and the Foreign Office.

⁹⁷ The obligation to leave the country is not necessarily due to the rejection of an asylum application. The figures also include rejections issued several years ago, see Deutscher Bundestag 2018g: 82.

⁹⁸ B 7 AY 1/16 R.

cooperation requirements or if their removal is impossible because they refuse to cooperate (Section 1a of the Act on Benefits for Asylum Seekers). Beneficiaries under the Act on Benefits for Asylum Seekers who are obliged to leave, but do not assist in obtaining a passport and thus prevent their being removed may therefore be refused to receive money to spend on everyday needs. “The fundamental right to a subsistence minimum that is in line with human dignity does not preclude the legislature from linking, within its available discretion, the unrestricted grant of benefits to ensure a subsistence minimum to complying with obligations, in this case applicable under immigration law” (Bundessozialgericht 2017).

Suspension of removal for vocational training

The Conference of Ministers and for Labour and Social Affairs decided in December 2017 to extend the provisions for suspension of removal to state-regulated vocational training courses for assistants. These courses take less time than regular vocational training programmes and were therefore not regarded as “qualified vocational training” within the meaning of Section 60a subs. 2 fourth sentence of the Residence Act. However, trainees often went on to regular vocational training, for example as nurses for the elderly or in hospitals, which then made it possible to issue a suspension of removal for vocational training. The extension of this option aims to increase legal certainty for trainees and employers and to help in getting more migrants to start vocational training for an occupation in which a labour shortage has been identified (Niedersächsisches Ministerium für Soziales, Gesundheit und Gleichstellung 2017).

The Integration Act of 2016 introduced the entitlement to the issuance of a suspension of removal for persons who start a state-recognised, qualified vocational training (Section 60a subs. 2 fourth sentence of the Residence Act; EMN BAMF 2017: 66 et seq.). Once they have successfully completed their training, they are entitled to a two-year residence permit, provided that the Federal Labour Office approves and that the further conditions set out in Section 18a subs. 1 nos. 2 – 7 of the Residence Act are met (Section 18a subs. 1a of the Residence Act). The suspension of removal for vocational training requires (in addition to other preconditions) that no concrete measures to terminate the stay are imminent (Section 60a subs. 2 fourth sentence of the Residence Act). Moreover, it may not be granted to persons from safe countries of origin whose asylum

application was filed after 31 August 2015 and rejected (Section 60a subs. 2 fourth sentence and subs. 6 first sentence no. 3 of the Residence Act). The Länder in parts differ in their interpretation and application of these provisions (Eichler 2017: 4 et seq.), which is why there are different practices concerning the issuance of the suspensions of removal for vocational training. For example, there is no agreement on when “concrete measures to terminate the stay” are supposed to have been initiated and whether for persons from safe countries of origin, the date of the formal asylum application or of the request for asylum is relevant regarding the deadline of 31 August 2015 (Weiser 2017: 37; BMI 2017i: 11). So far, there is no uniform legal opinion on this.⁹⁹

Anonymised healthcare voucher for migrants in Thuringia

In February 2017, a support office for persons without identity papers as well as for persons without health insurance was opened in Jena (Thuringia). It will remain in place for three years and offers weekly consultations with a medical doctor. In addition, there are several other trusted medical doctors in other cities in Thuringia who will issue anonymised healthcare vouchers which the patients can use for treatment by a medical doctor. The payment is borne by an association. Interpreter expenses are covered as well. The annual budget for the project amounts to EUR 250,000 (AKST 2017; Medizinische Flüchtlingshilfe Göttingen 2017).

Anonymised healthcare vouchers are supposed to enable persons with an irregular resident status to receive medical treatment in the respective Länder without being forced to rely on volunteer medical services, which are often organised by associations or organisations on the basis of donations, or having to apply for a medical certification from the proper social welfare provider (for an overview of the medical treatment of migrants residing irregularly in Germany see Mylius 2016; see also Bundesarbeitsgruppe Gesundheit/Illegalität 2017). In contrast to medical staff and members of the healing professions, employees of social welfare providers are

99 For example, the Higher Administrative Court of Lower Saxony decided that the date of the formal application was what counted (OVG Niedersachsen, decision of 8 December 2016 – 8 ME 183/16). In contrast, the Higher Administrative Court of Baden-Württemberg decided that the date of the asylum request was key (VGH Baden-Württemberg, decision of 9 October 2017 – 11 S 2090/17).

required to report residents without residence rights to the foreigners authority. Anonymised healthcare vouchers were already introduced in Göttingen and Hannover in 2016 (EMN/BAMF 2017: 67).

7.1.3 Developments referring to the EU

Fighting migrant smuggling in the Mediterranean

On 29 June 2017, Germany's participation in the EUNAVFOR MED Operation SOPHIA in the southern central Mediterranean was extended by another year. The "operation's key task" is "to combat the business model of migrant smugglers at sea" (Bundesregierung 2017a). This is done by seizing and destroying boats used by smugglers. In addition, the operation enforces the arms embargo against Libya. "In addition, the units of the operation fulfill their obligation under international law to rescue at sea" (Deutscher Bundestag 2017l: 2). Moreover, it supports the Libyan coast guard by exchanging information, providing training and increasing capacities (Deutscher Bundestag 2017m). The parliamentary opposition criticised this support for the Libyan coast guard on the grounds that there would be "actually no government" in Libya at the moment (Deutscher Bundestag 2017m). NGOs who rescue migrants in the central Mediterranean reported that the Libyan coast guard had resorted to violence against their ships during 2017 (Deutscher Bundestag 2018h: 2).

EU Emergency Trust Fund for Africa

In December 2017, the Federal Foreign Office announced that the contribution to the EU Emergency Trust Fund for Africa was to be increased by EUR 100 million. The fund aims to "improve migration management, reduce the causes of irregular migration and enable the return and reintegration of migrants" (Deutscher Bundestag 2018i). Out of this total of EUR 100 million, EUR 30 million will be used to support the IOM in Libya, for example for voluntary return programmes from Libya (Deutscher Bundestag 2018i; see Chapter 8.3). In addition, EU programmes to resettle persons in need of protection to countries of the European Union are to be supported financially (AA 2017a). The remaining EUR 70 million will be used for "other projects in North Africa" (Deutscher Bundestag 2018i). Several parliamentary groups, among them those of the SPD, Alliance 90/The Greens and the FDP,

criticised the thrust of the fund, which would spend 30% of its resources on migration management and has earmarked more funds for transit countries than for the countries of origin of migrants. As a result, it was "more of an instrument to secure borders than an instrument of development cooperation" (Deutscher Bundestag 2018i).

7.1.4 International developments

Cooperation with third countries

On 28 August 2017, Germany and Egypt signed an Agreement on closer coordination in migration policy (Bundesregierung 2017b). Among other things, the Agreement aims to improve cooperation in the areas of border protection and the fight against human smuggling. In addition, refugees and Egyptian municipalities which have received refugees are to be supported, as is the Egyptian education sector. The Agreement also includes improved cooperation in the field of voluntary and forced returns of Egyptian nationals from Germany. A "Centre for Jobs, Migration and Reintegration" is to be opened in Egypt to provide advice on legal migration options (Bundesregierung 2017b; see Chapter 10.2). A liaison officer of the Federal Police was already deployed to Egypt in 2016 "for the purpose of long-term border police cooperation"; in addition, three document and visa experts are working in Egypt (Deutscher Bundestag 2017n: 4). In 2017, "members of the Egyptian (border) police force working at airports were trained by the Federal Police in verifying the authenticity of documents and provided with document verification tools" (Deutscher Bundestag 2017n: 4; Deutscher Bundestag 2018j: 29, 43).

In addition, a bilateral Memorandum of Understanding on mobility, migration management, return and joint development was signed with Tunisia in 2017.

Information campaign "Rumours about Germany"

In October 2017, the Federal Foreign Office launched its online information campaign 'Rumours About Germany'.¹⁰⁰ It aims to "counter rumours spread by people smugglers on the internet", "collect all relevant information for migrants and refugees" and

100 Website of the campaign 'Rumours About Germany': <https://rumoursaboutgermany.info/> (13 March 2018).

combine them with facts (AA 2017b). The webpage is available in English, French and Arabic and optimised for mobile access and social media. The campaign is the successor of a former information campaign with the same name. The predecessor was launched in autumn 2015 by the German embassy at Kabul (Afghanistan) in cooperation with the UNHCR, the IOM, local NGOs, local media and diaspora groups in Germany (AA 2017c: 1 et seq.). Several explanations concerning asylum law were criticised as false or misleading. The Federal Foreign Office thus changed the information accordingly (Azizi/Schmalz 2018). The campaign website is regularly updated and also contains information on ways to get advice and on aid projects in the countries of origin and transit which are (co-)financed by Germany (AA 2017c: 1 et seq.). In 2018, regional content is to be added and the website is to be translated into Tigrinya, Dari/Farsi and Urdu (Deutscher Bundestag 2018k: 6).

The website and information campaigns against irregular migration more broadly are criticised by the parliamentary opposition and within the academic discourse for showing only the dangers of migration and restrictions on refugee admittance, but not informing refugees about their rights (Azizi/Schmalz 2018; see also Deutscher Bundestag 2018k: 9). Another point of criticism is that campaigns which aim to keep people from migrating and applying for asylum run counter to each refugee's entitlement to having their application for asylum examined individually. This is particularly problematic for countries with a relatively high protection rate, as among the asylum seekers from these countries there would be many with real protection needs (Azizi/Schmalz 2018). The Federal Foreign Office claims that the aim of the campaign is "not to deter, but to inform" (AA 2018a). During the first four months after the website's going live, it registered more than 240,000 hits, with 70% of these coming from "countries of origin and transit of refugees and migrants to Europe" (Deutscher Bundestag 2018k: 14).

7.2 Border control

7.2.1 Background and general context

The Federal Police (BPOL) generally only conducts border controls at German air and maritime borders. Even after the abolition of controls at borders inside

the Schengen area, the Schengen Border Code permits exercising police authority in order to combat cross-border crime. Such controls are conducted by the Federal Police along the German Federal railway system, in trains, and at seaports as random checks and based on situation reports or experiences in border control. Border protection includes prohibiting and preventing unauthorised entry, combating cross-border people smuggling and other cross-border crime. If a person who has entered German territory without authorisation and without applying for asylum is found within a 30 km corridor along the border to EU Member States, s/he will be removed following unauthorised entry (see Chapter 8).

External air and maritime borders are controlled based on the regulations of the Schengen Border Code. Document scanning and verification equipment is used for verifying a document's authenticity based on optical and digital features. In addition, biometric procedures are increasingly used, mainly in order to verify the identity of travellers (e.g. e-Passport controls, automated border control systems).

The Federal Police cooperates with the police forces of the EU Member States and of third countries in the area of border control. As part of its own externalisation strategy, this cooperation with third countries to police borders is an important part of integrated border management for controlling the external borders of the EU. In addition to the deployment of personnel, it includes assisting in capacity building for border controls. This usually takes the form of training in the framework of bilateral measures and projects supported by the EU¹⁰¹. The purpose of these measures is to improve cooperation with foreign (border) police forces while taking into account key aspects relevant to migration. Moreover, border police structures in other countries are strengthened.

7.2.2 National developments

Statistics

In 2017, the Federal Police and the authorities tasked with cross-border traffic police controls registered a total of 43,970 unauthorised entries. This is a decline of 60.7% in comparison to the preceding year (2016: 111,843; 2015: 217,237; Deutscher

¹⁰¹ For a detailed list of police activities abroad, including in bi- and multilateral projects, see Deutscher Bundestag 2018j.

Bundestag 2018g: 72; BKA 2016: 11). The entry of a person is considered unauthorised if the s/he does not possess a required passport or passport substitute or the required residence title (see Section 14 subs. 1 nos. 1 or 2 of the Residence Act in conjunction with Section 3 subs. 1 and Section 4 of the Residence Act). The five top countries of origin in 2017 were Afghanistan, Nigeria, Syria, Iraq and Somalia (Deutscher Bundestag 2018g: 72). 12,370 persons were refused entry at the border (2016: 20,851; 2015: 8,913; Deutscher Bundestag 2018d: 32; see Chapter 8.2.2).

Temporary reintroduction and prolongation of border controls at internal borders

Border controls at the German-Austrian border, which had been reintroduced in September 2015, were prolonged by another six months on 1 May 2017. Former Federal Minister of the Interior de Maizière claimed the prolongation was necessary for “reasons of migration and security policy” (BMI 2017j). Before, the EU Council had adopted a decision proposed by the EU Commission which allowed extending the border controls until 11 November 2017 under the so-called crisis mechanism of the Schengen Borders Code (BMI 2017k).

On 12 October 2017, the Federal Minister of the Interior announced another six-month prolongation “by national responsibility” starting on 12 November 2017 (BMI 2017k). In addition, border controls were introduced for flights from Greece to Germany. “The decision was taken in close consultation with the interior ministries of Austria, Denmark, Sweden and Norway” (BMI 2017k). The EU Commission and the EU Council were informed of this decision (BMI 2017k).

Due to the G20 summit in Hamburg on 7 and 8 July 2017, border controls were temporarily conducted between 12 June and 11 July 2017 “depending on the situation, i.e. flexible in both location and time, at all German land, air and maritime Schengen interior borders”. The aim was “to prevent potential perpetrators of violence from entering Germany and contribute to a smooth progress of the event” (BMI 2017l).

Automated border controls

In 2017, the (partially) automated border control system (EasyPASS) was further extended at German

airports. By the end of the year, 177 control lanes were in operation at the airports of Frankfurt am Main, Munich, Cologne-Bonn, Düsseldorf, Berlin-Schönefeld, Berlin-Tegel and Hamburg. EasyPASS is based on the photograph saved in passports and optionally in German identification cards. The EasyPASS procedure is available to citizens of the EEA Member States¹⁰² and Switzerland as well as to registered travellers from selected third countries, these currently being the United States of America and the Hong Kong Special Administrative Region of the People's Republic of China. At the moment, preparations are underway to open EasyPASS to registered South Korean nationals.

Cooperation with neighbouring States

In 2015, a temporary police cooperation centre, in which the Federal Police, the Bavarian police and the Austrian police cooperate, was established at Passau. This structure was made permanent by an agreement signed by the ministers of the interior of both countries on 28 March 2017 (Schmid 2017). The cooperation initially focused on the registration of asylum seekers and was then extended to the fight against cross-border crime due to its “sustained success” (Deutscher Bundestag 2017l: 6). Similar cooperation centres (Common Centres) have been established with Austria, the Czech Republic, Denmark, France, the Netherlands, Poland and Switzerland.

In 2017, there were joint patrols along the borders with border police units from Austria, Belgium, the Czech Republic, Denmark, France, Hungary, Italy, Poland, and Switzerland in order to fight people smuggling and unauthorised migration of third-country nationals within the EU (Deutscher Bundestag 2018j: 20).

7.2.3 Developments referring to the EU

Statistics

In 2017, unauthorised border crossings declined considerably both at the external borders of the EU and at German borders. Overall, 204,719 such border crossings were documented, a decline of 60% in comparison to the preceding year (as for Germany) and a decline of 89% in comparison to 2015

¹⁰² The European Economic Area (EEA) consists of all EU Member States plus Iceland, Liechtenstein and Norway.

(Frontex 2018: 8). 183,548 persons were refused entry at the EU borders, a decline of 15% versus 2016 (2016: 126, 502; Frontex 2018: 21).

Passenger Name Record Act

On 10 June 2017, the ‘Act on the Processing of Passenger Name Record (PNR) Data to Implement Directive (EU) 2016/681’¹⁰³ (Passenger Name Record Act)¹⁰⁴ entered into force. The Directive foresees an “obligatory transfer of PNR data by air carriers for flights going from the European Union to a non-EU Member State or from a non-EU Member State to an EU Member State. It also permits the EU Member States to include flights between the Member States themselves and data transfers by other economic operators which provide travel-related services including flight bookings” (Deutscher Bundestag 2017o).

Intensification of controls at external borders

The Schengen Border Code was amended as of 15 March 2017 in order to allow intensified checks against relevant databases at the external borders of the EU. The amendment is based on Regulation (EU) 2017/458.¹⁰⁵ It obliges Member States, as of 7 April 2017, to conduct systematic controls of EU citizens and persons who are entitled to free movement under EU law once they leave the Schengen area and to compare their data with databases for lost or stolen identity documents as well as to make sure that they are no threat to public order and domestic security. Moreover, the data of third-country nationals must be checked not only at the time of entry, but also at the time of leaving in order to make sure that the foreigners are not a threat to public order and domestic security. The authenticity of the identity documents with an electronic memory element of all these persons must be checked in relation to the data stored there. In case of doubts about the authenticity of the document or the identity of its holder at least one of the biometric identifiers integrated in the documents shall be examined.

¹⁰³ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime

¹⁰⁴ BGBl. 2017 Part I No. 34 p. 1484.

¹⁰⁵ Regulation (EU) 2017/458 of the European Parliament and of the Council of 15 March 2017 amending Regulation (EU) 2016/399 as regards the reinforcement of checks against relevant databases at external borders.

Entry/exit system

On 25 October 2017, the European Parliament adopted Regulation (EU) 2017/2225 (EES Regulation), which introduces an entry/exit system for third-country nationals. The new system will register all third-country nationals who enter the EU for a short stay (i.e. less than 90 days) (KOM 2016a). Personal data (name, date of birth, nationality, sex), passport data, fingerprints and face scans will be stored (Article 16 para 1 of the EES Regulation; Europäisches Parlament 2018a: 6). The system shall be linked to the Visa Information System (VIS), and prosecution authorities shall be allowed to conduct crosschecks against the EES (Europäisches Parlament 2018a: 1). The European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA) will establish the system jointly with the Member States and ensure that it is ready for use by 2020 (Rat der EU 2017b). Among other things, the new system will help to make border controls quicker and more efficient and to monitor compliance with authorised periods of stay (Europäisches Parlament 2018a).

A member of the Green parliamentary group in the European Parliament criticised the entry/exit system, saying that it was an “expensive and disproportional collection of data” which put travellers under “general suspicion” (Albrecht 2017). Moreover, concerns about the system’s being in line with EU fundamental rights were voiced (Albrecht 2017; see Europäisches Parlament 2018a: 8).

7.2.4 International developments

Federal Police liaison officers

As of February 2018, 28 Federal Police liaison officers for border police issues were deployed abroad (Deutscher Bundestag 2018j: 13). In addition, a total of 51 document and visa experts worked in 27 countries abroad (Deutscher Bundestag 2018j: 10 et seq.). Nine Federal Police officers were deployed as border police support officers in Greece, Italy and France on the basis of bilateral agreements (Deutscher Bundestag 2018j: 14; for deployments in the framework of Frontex operations see Chapter 7.3.2).

Cooperation with third countries in the area of border security

Tunisia, the Palestinian territories, Morocco, Jordan and Nigeria will benefit from the Federal Government programme on training and equipment for foreign police forces (AAH-P) in the period from 2017 until 2020. The programme focuses on police training and the procurement of related equipment, excluding instruments for the direct use of force. The goal is to enable the police in the partner countries to conduct high-standard police work. Strengthening border management in third countries and the fight against people smuggling and irregular migration are additional goals. The rule of law and respect for human rights should become an integral element of the police forces' work.

Cooperation with third countries in the framework of the Khartoum process

In the framework of the 'Better Migration Management' project, which is jointly financed by the Federal Ministry for Economic Cooperation and Development and the EU Trust Fund for Africa, Germany, France, Italy, the Netherlands and the UK support countries which participate in the Khartoum Process¹⁰⁶ (Ethiopia, Eritrea, Djibouti, Kenya, Somalia, Sudan, South Sudan and Uganda) from 2016 until 2019 with the aim of improving their migration management and fighting people smuggling and human trafficking in particular. While Egypt and Tunisia also participate, only regional activities are planned in these two countries (GIZ, n.d.a). Joint police action against irregular migration is not on the agenda (Angenendt/Kipp 2017: 3). There are activities at four levels: harmonisation of the countries' migration policies and strengthening of regional co-operation, strengthening of institutions which combat human trafficking, support and protection for migrants, and information and advice to migrants (GIZ, n.d.a).

In 2017, the programme structure was established in all partner countries except Uganda, and first projects were launched (GIZ 2018a). These projects focused on strengthening migrants' rights and

providing protection and care for them (Angenendt/Kipp 2017: 4), providing training for border controls at airports or supporting voluntary returns (GIZ 2018a).

Civil-society organisations in particular criticise the plans for being "directed too much at tightening border controls and reducing irregular migration to Europe" (Angenendt/Kipp 2017: 3). Another point of criticism is the cooperation with third countries whose governments systematically violate human rights (Angenendt/Kipp 2017: 4). GIZ, which implements the project jointly with other partners, emphasises that the rights of and protection for migrants are at the focus of the implementation (GIZ, n.d.a).

7.3 European Border and Coast Guard Agency (Frontex)

7.3.1 Background and general context

Taking into account national competencies, the European Border and Coast Guard Agency (Frontex) coordinates the operational cooperation of the EU Member States at the external borders of the EU, supports the Member States as a "service provider" for training national border police officers for the purpose of harmonisation, produces risk analyses and provides the Member States with technical and operational support, specifically through joint operations or other services ("EUROSUR" information network, research and development, studies/recommended courses of action, etc.). Since 2013, the agency's independent Fundamental Rights Officer and the Consultation Forum on Fundamental Rights have been tasked with ensuring that fundamental rights are preserved in all FRONTEX activities. Since a reform of Frontex in 2016, the European Border and Coast Guard Agency disposes of a pool of 1,500 immediate response officers and of an immediate response equipment pool. In addition, there is a pool of officers for returns.

¹⁰⁶ The Khartoum Process "is a regional dialogue on migration between EU Member States and nine African countries from the Horn of Africa and transit countries, as well as the European Commission, the African Union Commission and the European External Action Service. The objective is to establish a long-standing dialogue on migration and mobility aimed at enhancing the current cooperation" (KOM 2015b).

7.3.2 Developments referring to the EU

Involvement in Frontex operations¹⁰⁷

In 2017, Germany sent Federal Police officers to participate in Frontex-coordinated operations for a total of approximately 41,600 working days. Overall, 953 police officers were deployed in Frontex measures. The focus was on so-called 'hot spot measures' in Greece and Italy. Most officers were deployed to the Aegean islands of Lesbos, Chios, Samos, Leros and Kos as well as to the Italian external Schengen borders (southern Italy). Moreover, two boats (since March 2016) and a police helicopter suitable for marine use were deployed (the latter for one month). In 2017, the Federal Police was once again supported by the Länder police forces and the Federal Customs Administration. In 16 other European countries measures in which the Federal Police participated were coordinated by Frontex. Deployments along the external EU land and air borders remained at the same level in comparison to the previous year. The Federal Police sent 28 officers to support the border police in Greece, Italy, France, Croatia and Switzerland on the basis of bilateral agreements. Overall, the Federal Police deployed a total of 981 officers to 18 countries on the basis of bilateral and Frontex-coordinated border police measures in 2017 (see Chapter 8.3 for more information on the German participation in Frontex return measures).

¹⁰⁷ This chapter is based on material provided by the Federal Police.

8 Return migration

8.1 Background and general context

Return policy is a control instrument in migration policy. It aims at making those who have no right of residence and are therefore obliged to return leave the Federal or European Union territory. An obligation to leave the country may stem from the rejection of an asylum application or from the expiration of a residence title or the period for which a person may legally stay without a visa.

Return policy includes measures to promote voluntary return¹⁰⁸ or onward migration and reintegration as well as measures of forced return (e.g. removal following unauthorised entry or removal). Voluntary return takes precedence over forced return, as set forth both in national law (see, for example, Section 58 subs. 1 of the Residence Act) and in European law (Directive 2008/115/EC on return). That is why persons who are obliged to leave the country are usually granted between seven and 30 days to leave voluntarily. Only after that period will a forced return take place. The responsibilities in the area of voluntary and forced return are divided between the Federal Government and the Federal Länder, with forced returns being regulated in much greater detail at the Federal level than voluntary returns (see Grote 2015: 22).

¹⁰⁸ The term “voluntary return” is often regarded as inappropriate, as the persons who are obliged to leave the country usually do not have any legal alternative, which means that they do not return “voluntarily” in the strict sense of this word (SVR 2017: 7). However, from the government’s vantage point the return is “voluntary” because no coercive means are used and the persons may leave Germany voluntarily within a given period of time; in other words, the obligation to leave the country is not immediately enforced (SVR 2017: 7). Since the term “voluntary return” is commonly used in residence-law discussions about persons who are obliged to leave the country as an opposite to forced return (removal following unauthorised entry or removal), it is used in this report as well.

8.1.1 Voluntary return and assisted voluntary return

The REAG programme, which is funded by the Federal Government and the Länder, was launched in 1979 and expanded by the GARP¹⁰⁹ programme in 1989. It is the most important programme for the promotion of voluntary return in Germany. The REAG/GARP programme is run by IOM and offers, in addition to paying travel costs, travel aid (REAG) and, if applicable, start-up aid for reintegration (GARP), with the amount of the assistance depending on the country of origin. Since 1 February 2017, the ‘StarthilfePlus’ programme complements the REAG/GARP programme and offers financial support (see Chapter 8.2.1) Nationals from European third countries, i.e., non-EU Member States, from which the Federal territory can be entered without a visa and whose nationals entered Germany after being exempted from the visa requirement are only eligible for travel costs but not for travel or start-up assistance (this applies in particular to nationals of countries in the western Balkans and countries which are exempted from a visa requirement, nationals of the Republic of Moldova, of Ukraine and of Georgia). This does not apply to victims of human trafficking, who can receive support under the REAG/GARP programme even if they are from EU Member States or EU third countries with no visa requirement. Besides REAG/GARP and StarthilfePlus, there are numerous transnational, European, Federal, Land and local projects to promote return to and reintegration in the country of origin and offer support in addition to and beyond REAG/GARP. Some of them focus on certain (vulnerable) target groups, specific regions of origin or types of assistance or return preparation measures (for a list of the relevant institutions see Grote 2015 and SVR 2017). For example, several Länder offer travel costs or travel aid to persons from the western Balkan countries, who are not eligible for REAG/GARP support.

¹⁰⁹ REAG: Reintegration and Emigration Programme for Asylum-Seekers in Germany; GARP: Government Assisted Repatriation Programme; for more details on REAG/GARP and other transnational, federal, state and local return programmes see Grote 2015.

Most Federal Länder offer voluntary return counselling in the arrival and reception centres and at the foreigners authorities. Moreover, there is independent counselling on voluntary returns at the Land level, for example by associations of the non-statutory welfare. An overview of counselling options and assisted voluntary return programmes can be found on the website www.returningfromgermany.de.

8.1.2 Forced returns

In addition to measures supporting voluntary return, there are a number of ways for the authorities to enforce the obligation to leave the country, namely removal following unauthorised entry and removal (please see the infobox for more information on the terms). The requirement to leave is enforceable if the period granted for departure has passed and no appeal which stays removal is possible anymore. In addition, removal, removal following unauthorised entry and expulsion result in a ban on entry and residence pursuant to Section 11 of the Residence Act (see Hoffmeyer-Zlotnik 2017: 49 et seq.).

If an asylum application is rejected, the removal warning is issued together with the decision by the Federal Office for Migration and Refugees. If a foreigner is to be transferred to a safe third country or to a country responsible for processing the asylum application under the Dublin Procedure, the Federal Office for Migration and Refugees shall order his or her removal to this country as soon as it has ascertained that the removal can be carried out (Section 34a subs. 1 first sentence of the Asylum Act). If a foreigner is obliged to leave the country because his or her residence title has expired, been withdrawn or got lost, the competent foreigners authority shall issue the return decision (see Section 50 subs. 1 of the Residence Act; Section 59 subs. 1 first sentence of the Residence Act in conjunction with Section 71 subs. 1 of the Residence Act).

The Länder are responsible for the preparation of forced returns, including the provision of travel documents and the order detention. “The return procedure as such, i.e. the physical removal from the Federal territory, is conducted by the border authorities, i.e. usually the Federal Police (Section 71 subs. 3 no. 1d of the Residence Act)” (EMN/BAMF 2016b: 15). The provisions on terminating a foreigner’s stay in Germany are often implemented

differently, depending on the Land or foreigners authority which is responsible (SVR 2017: 33 et seq.). In order to improve the cooperation between the Federal Government and the Länder and to increase the coherence in terms of return measures, the Federation-Länder Coordination Agency for Integrated Return Management (Bund-Länder-Koordinierungsstelle zum Integrierten Rückkehrmanagement, BLK-IRM) was set up at the Federal Office for Migration and Refugees at the end of 2014. In 2017, the Federation-Länder Coordination Agency for Integrated Return Management was included in the newly established Repatriation Support Centre (ZUR) (see Chapter 8.2.2).

In order to facilitate and accelerate return measures the Federal Government has signed readmission agreements or other non-binding declarations with several countries of origin specifying the obligation to readmit their own nationals. Furthermore, the agreements signed in recent years typically include a requirement, under certain conditions, to admit and transfer those required to depart who are not nationals of one of the respective contracting parties (third-country nationals and stateless persons). More recent agreements and declarations also include the option to conduct removals with passport substitutes issued by the EU, which means that it is no longer necessary to request passport substitutes from the country of destination (Hoffmeyer-Zlotnik 2017: 35). One example is an agreement with Afghanistan signed in October 2016. In order to provide incentives for a better co-operation of third countries in the area of readmissions, the EU has offered additional financial support in other areas (“more for more”) (BMI 2016). Alongside the Federal Republic, the EU has also signed readmission agreements with numerous third countries (Cassarino, n.d.).¹¹⁰

In addition, Germany participates in several other exchange and cooperation networks in the area of forced returns. The EURINT¹¹¹ network, which consists of 21 EU Member States, and the European Border and Coast Guard Agency (Frontex) are two examples. The Federal Police is the German Frontex Contact Point (Direct Contact Point; see Chapter 7.1). Moreover, a Return Expert Group (REG) has

¹¹⁰ A list of all readmission agreements (as of April 2015) can be found on the website of the Federal Ministry of the Interior: http://www.bmi.bund.de/Shared-Docs/Downloads/DE/Themen/MigrationIntegration/AsylZuwanderung/RueckkehrFluechtlinge.pdf?__blob=publicationFile (28 March 2017).

¹¹¹ European Integrated Return Management.

Info box: Forced returns

Return is a general term which covers all measures to end or prevent a stay in a country. It is often used to denote that the return is not voluntary or autonomous. The term is mainly used in the context of EU law (see Article 3 para 3 of the Return Directive; see also SVR 2017: 10).

Removal or deportation (Section 58 of the Residence Act) means that a foreigner's obligation to leave the country is enforced using coercive measures. It requires that the obligation to leave is enforceable and that the foreigner has not voluntarily left the country during the period granted for this purpose or that supervision of the departure appears necessary.

Removal following unauthorised entry (Section 57 of the Residence Act) is a measure which immediately ends the stay of a foreigner who is intercepted in conjunction with an unlawful entry near the border (SVR 2017: 10). Such a removal can only take place if the person concerned has not applied for asylum and if removal is not prohibited. If the foreigner entered Germany irregularly from another EU Member State, s/he will be removed to that state. In contrast to a 'regular' removal, a removal following unauthorised entry does not require a warning or the granting of a period for voluntary return (Hailbronner 2017a: 359); in addition, any legal remedies usually do not have a suspensory effect (see Chapter 7.2.2).

Refusal of entry (Section 15 of the Residence Act) takes place at the border and thus does not end, but prevent a stay in Germany. Persons can be refused entry at the border if they enter the country without authorisation or if they do not comply with the requirements of entry.

Expulsion (Sections 53 - 56 of the Residence Act) is not an actual procedure, but an administrative act to terminate the lawfulness of the foreigner's residence in Germany and create an obligation to leave the country. Foreigners whose stay endangers public safety and law and order or the interests of the Federal Republic of Germany can be expelled.

A **removal order** pursuant to Section 58a of the Residence Act contains both an expulsion order and the relevant order of enforcement. It can serve as grounds for detention if the removal cannot be enforced immediately (Section 62 subs. 3 no. 1a of the Residence Act; Kreienbrink 2007: 124). This is an exceptional provision for particularly dangerous situations, which permits the supreme Land authorities or the Federal Ministry of the Interior to remove a foreigner "in order to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat" (Section 58a subs. 1 first sentence of the Residence Act).

been established within the European Migration Network (EMN); its members come from the EU Member States and Norway. This is where issues of voluntary and forced return and reintegration are discussed and practical experience is exchanged.

8.1.3 Reintegration

The return programmes are complemented by a number of programmes that support reintegration in the country of origin.

In Kosovo, the return and reintegration project URA offers social counselling, job placement services and psychological care as well as financial emergency

support and longer-term reintegration offers for returnees. This is a joint project run by the Federal Government and several Länder (for more details see Chapter 10.2).

The European Reintegration Network (ERIN) is an international return and reintegration programme, in which 19 countries (including Germany) are involved. It is coordinated by the Netherlands (BAMF 2017n). The network, which is mainly financed within the specific measures framework of the European Asylum, Migration and Integration Fund (AMIF), offers counselling and support by local organisations, such as IOM or local NGOs, in the country of origin (BAMF 2017n). The goal is to "facilitate access to vocational training or to the labour market in the country of origin

and thus make reintegration possible in the long run” (BAMF 2017n). Under the ERIN programme, reintegration benefits for returnees from Germany are currently available for 15 destinations¹¹² (BAMF 2017o).

The project “Returning to New Opportunities” is another reintegration support project. It was launched in 2017 and offers support in a number of countries (see Chapter 10.2).

Since 1 February 2017, the REAG/GARP support has been supplemented by the programme Starthilfe-Plus, which includes a reintegration component (see Chapter 8.2.1).

8.2 National developments

8.2.1 Voluntary returns and reintegration

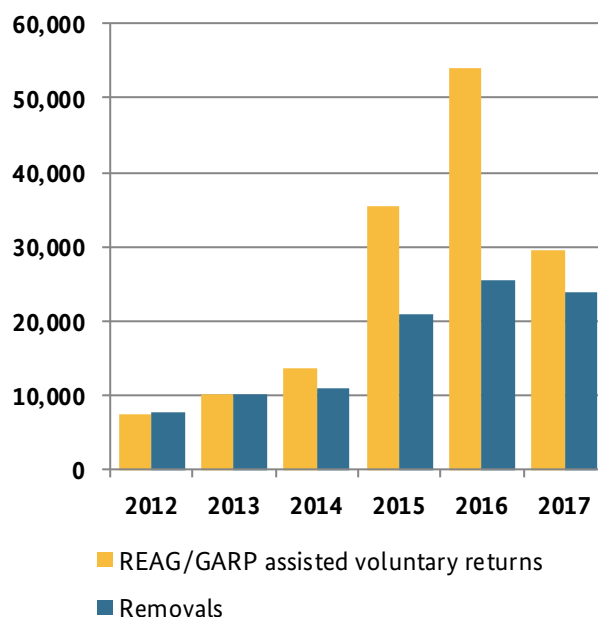
Statistics

In 2017, 29,522 voluntary returns were funded through the REAG/GARP programme. This is a decline of 45.3% in comparison to the previous year (2016: 54,006 supported returns). However, the number of REAG/GARP supported returns was unusually high in 2016, particularly in comparison to the number of removals (see Figure 6). This is mainly due to the fact that western Balkan nationals made up a large number of the total of returnees. Since 2016, the number of migrants from these countries has declined significantly, and the number of returnees fell as a consequence, too. The Federal programme StarthilfePlus supported 10,000 people from its launch at the beginning of February 2017 until the end of the year. This figure is included in the total number of REAG/GARP programme recipients, as GARP support is a precondition for touching StarthilfePlus support (IOM 2017c).

In 2016, the number of supported voluntary returns was more than double than that of removals. In 2017, it rose by another 23.2%. However, the ratio between supported voluntary and forced returns may differ considerably depending on the Land (SVR 2017: 22).

¹¹² Afghanistan, Bangladesh, Côte d'Ivoire (Ivory Coast), India, Iran, Iraq, Morocco, Nigeria, Pakistan, Russian Federation (only Chechnya), Senegal, Somalia, Sri Lanka, Sudan, Ukraine.

Figure 6: REAG/GARP returns and removals (2012 - 2017)



Source: IOM Germany, Federal Office for Migration and Refugees

Figure 7 shows that about 24% of the returnees were Albanian and 10% each Macedonian and Serbian nationals. Other important returnee groups were nationals from Iraq (about 10%), the Russian Federation, Kosovo and Ukraine (about 5% each). Overall, about 79% of all support grants went to the top ten nationalities (2016: 90.5%). Nationals of the six western Balkan countries¹¹³ accounted for about 50% of all support grants. The ratio was down from about 67% in 2016 (see EMN/BAMF 2017: 61).

While there are comprehensive statistics on returns supported by the REAG/GARP programme, there are no complete figures on returns supported by Länder or local programmes. The number of those who leave Germany without any support whatsoever is not registered either (Hoffmeyer-Zlotnik 2017: 27 et seq.).

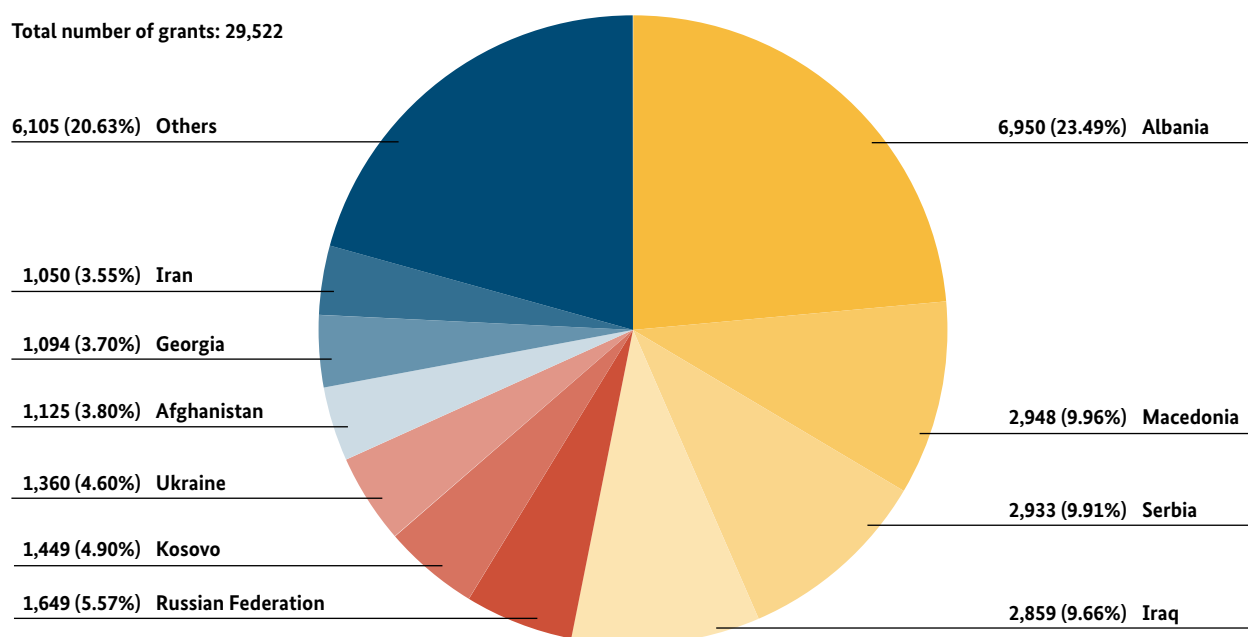
Return programme StarthilfePlus

Since 1 February 2017, the REAG/GARP programme has been supplemented by the programme StarthilfePlus. The support amount depends on the date of the return decision. If the person in question decides to return even before the asylum procedure is completed, the grant amounts to EUR 1,200 per person (level 1). If s/he does so after the asylum application

¹¹³ Albania, Kosovo, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Montenegro, Serbia.

Figure 7: Top ten nationalities among recipients of REAG/GARP support (2017)

Total number of grants: 29,522



Source: IOM Germany

is rejected, but within the deadline set for departure and no appeal is filed against the asylum decision, the grant amounts to EUR 800 (level 2). Beneficiaries of international protection may also touch StarthilfePlus grants of EUR 800 (level S)¹¹⁴. Level S applications may be filed by all nationals who are eligible for REAG support, while applications for the other levels may be filed only by nationals who are eligible for GARP support (IOM/BAMF, n.d.).

Until the end of 2017, there was a transitory provision (level Ü) for persons registered in Germany before 1 February 2017. This level Ü enabled persons who were enforceably required to leave the country and asylum applicants in a second or follow-up procedure to receive EUR 800 of support (BMI 2017m). Between February and July 2017, more than 70% of the StarthilfePlus support was paid out under level Ü (BMI 2017m). Between 1 December 2017 and 28 February 2018, there was a temporary expansion of StarthilfePlus, which offered housing assistance (e.g. rent, renovation costs) in the destination country for up to 12 months. The maximum additional support amounted to EUR 1,000 for individuals or EUR 3,000 for families.

The initiative was named “Your country. Your future. Now!” (BMI 2017n). On 1 January 2018, another level D was introduced for Albanian and Serbian

nationals who have been living in Germany for more than two years and whose removal was suspended. If these persons receive StarthilfePlus support, they can touch an additional EUR 500 and, depending on their needs, housing assistance or medical treatment (IOM/BAMF, n.d.).

Diakonie was one organisation which criticised the StarthilfePlus programme and the differentiations between the incentives, saying that this created an incentive not to challenge asylum application rejections even if there was a chance of success (MiGAZIN 2017). The Expert Council of German Foundations on Integration and Migration (Sachverständigenrat deutscher Stiftungen für Integration und Migration, SVR) welcomed the measure in principle, as it strengthened the means for voluntary returns, but said that a ‘waiver premium’ in the form of return support was “questionable on ethic grounds” (SVR 2017: 40).

Return hotline and return portal

Since 1 February 2017, the return hotline, which can be reached via the central phone number of the service centre of the Federal Office for Migration and Refugees¹¹⁵, has been offering basic information

¹¹⁴ Children aged below 12 will receive half of these amounts.

¹¹⁵ Telephone number of the service centre of the Federal Office for Migration and Refugees: +49 911 943-0.

on voluntary returns and on return and reintegration programmes. The aim is to complement the service of the return advisory offices and facilitate access to information (BAMF 2017p). In addition, the new online information portal on returns, www.returningfromgermany.de, went live by mid-May 2017. It was developed by the Federal Office for Migration and Refugees in cooperation with IOM (BAMF 2017q) and contains information on nationwide return and reintegration programmes as well as on Land programmes. Moreover, the contact data of more than 1,400 state and non-state advisory centres are available via the portal (BAMF 2017q).

Return information by the Federal Office for Migration and Refugees

In March 2017, the Federal Office for Migration and Refugees started another pilot project to provide return information to all applicants at three branch offices (BAMF 2017q). Since the end of June 2017, all BAMF offices have been offering standardised return information to asylum applicants, regardless of their country of origin or their prospect to remain (BAMF 2017q). This information also refers to return advice provided by the Länder and the associations of the non-statutory welfare. Diakonie Rheinland-Westfalen-Lippe criticised that the information is handed out when applicants file their asylum application, as this made asylum applicants “insecure” and “hampered” them ahead of their interview (Diakonie Rheinland-Westfalen-Lippe 2017: 7).

Expansion of the ERIN programme

In 2017, the ERIN programme was extended to cover additional destinations. Returnees from Germany can now receive support and advice in Bangladesh, Côte d’Ivoire, Senegal and Sudan, too (BAMF 2017n). However, the lack of contract partners may lead to

delays in local support in some ERIN destination countries¹¹⁶.

8.2.2 Forced return

Statistics

In 2017, Germany carried out 23,966 removals, 1,707 removals following unauthorised entry and 12,370 refusals of entry. The figures for removals and removals following unauthorised entry also include 7,102 Dublin transfers conducted in 2017 (Deutscher Bundestag 2018d: 14). The top five nationalities of removed persons were Albanian, Kosovar, Serbian, Macedonian and of the Russian Federation.

The number of removals remained largely unchanged after having risen considerably in a year-on-year comparison in 2015 (see Table 7). The significant rise in refusals of entry in 2015 and 2016 (see Figure 8) is related to the border controls at the Austrian border, which were reintroduced on 13 September 2015 (see EMN/BAMF 2017: 33; see Chapter 7.2).

Act to Improve the Enforcement of the Obligation to Leave the Country

On 29 July 2017, the ‘Act to Improve the Enforcement of the Obligation to Leave the Country’ entered into force. It entailed several amendments to the Residence Act, including in the areas of detention to secure removal, custody to secure departure, residence requirements for persons who are obliged to leave Germany and their electronic monitoring and the announcement of removals. Other

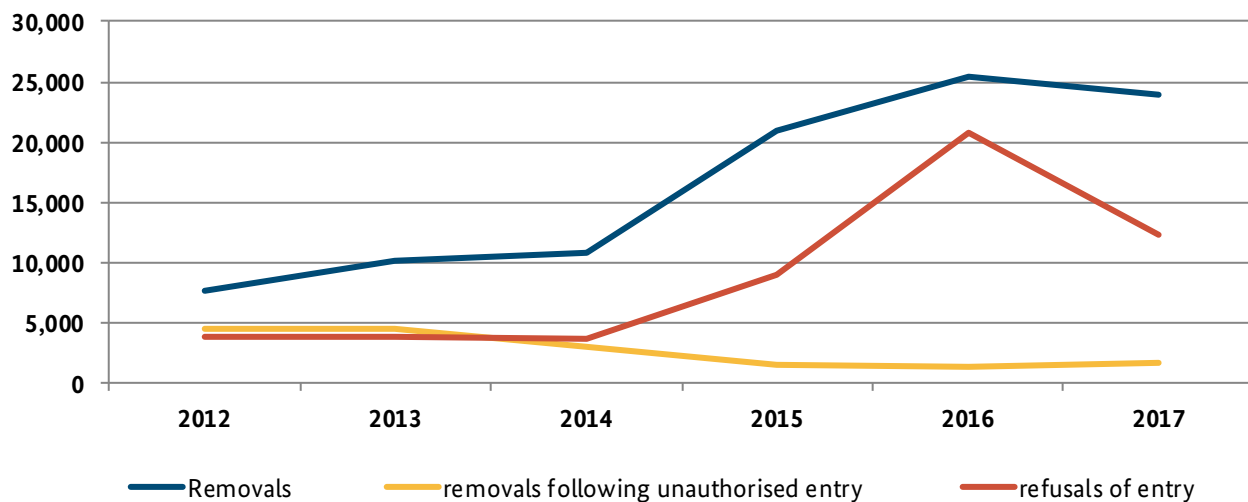
¹¹⁶ Bangladesh, Côte d’Ivoire, Iran, Nigeria, Senegal, Somalia, Sri Lanka and Sudan.

Table 7: Number of enforced removals, removals following unauthorised entry and refusals of entry (2012 – 2017)

	2012	2013	2014	2015	2016	2017
Removals	7,651	10,198	10,884	20,888	25,375	23,966
Removals following unauthorised entry	4,417	4,498	2,967	1,481	1,279	1,707
Refusals of entry	3,829	3,856	3,612	8,913	20,851	12,370

Source: Deutscher Bundestag 2013b, 2014, 2015a, 2016c, 2017p, 2018d.

Figure 8: Development of enforced removals, removals following unauthorised entry and refusals of entry (2012 - 2017)



Source: Deutscher Bundestag 2013b, 2014, 2015a, 2016c, 2017p, 2018d.

amendments referred to asylum applications by unaccompanied minors (see Chapter 5), the obligation to stay at reception centres (see Chapter 4.1.2.2) and the analysis of mobile data carriers to establish the identity of asylum applicants (see Chapter 4.1.2.3).

The law extended detention to secure removal to persons who are enforceably required to leave Germany and who “pose a significant risk to the life and limb of others or significant legally protected internal security interests” (Deutscher Bundestag 2017i: 5). In such cases, removal can be ordered even if they cannot be removed within the next three months (see Section 62 subs. 3 fourth sentence of the Residence Act). Normally, ordering detention would not be permissible in such cases (Section 62 subs. 3 third sentence of the Residence Act).

The period for which a person may be taken into custody to secure departure was extended from four to ten days (Section 62b subs. 1 first sentence of the Residence Act). A person who is enforceably required to leave the Federal territory may be placed in custody by judicial order if the period for voluntary departure is over and they have repeatedly violated their statutory obligation to cooperate or deceived the authorities regarding their identity and their behaviour suggests that they will try to make the removal more difficult or impossible (Section 62b subs. 1 of the Residence Act).

The preconditions for custody to secure departure are less strict than those for detention to secure removal. The main purpose of the custody to secure departure is to enable collective removals, provided

that a removal does indeed take place within the time limit (Hailbronner 2017a: 388). At the end of 2017, there was only one facility for persons taken into custody to secure departure, at Hamburg. Several Länder were thinking about establishing facilities for persons taken into custody to secure departure, among them Hesse and Saxony (von Benbenburg 2017; Medienservice Sachsen 2017).

The Act also tightened residence restrictions for persons who are obliged to leave Germany if they have wilfully given false information, deceived the authorities about their identity or nationality and thus prevented a removal or not complied with acceptable requirements during the procedure to overcome obstacles to departure. In such cases, the responsible foreigners authority shall restrict them to the administrative district of respective authority (Section 61 subs. 1C second sentence of the Residence Act).

The law also introduced the possibility to order electronic location monitoring for so-called “dangerous suspects” (Section 56a of the Residence Act). Dangerous suspects are persons who have received a removal warning (Section 58a of the Residence Act; see the info box) or in whose cases there is a particular interest in having the foreigner expelled because they threaten the free democratic basic order or the security of the Federal Republic of Germany, are a leader of a banned organisation, are involved in violent activities or call publicly for the use of violence or incite others to hatred (Section 56 subs. 1 second sentence in conjunction with Section 54 subs. 1 nos. 2 - 5 of the Residence Act).

Finally, the law introduced a ban on notifications about removals under certain circumstances to persons who have benefited from a tolerated stay status for some time. As a rule, persons whose removal has been suspended for more than a year shall receive a notification on the removal at least one month in advance. Under the new provisions, such a notice is no longer allowed if the foreigner brought about the obstacle precluding removal by intentionally furnishing false particulars or by his or her own deceit concerning his or her identity or nationality or if he or she fails to meet reasonable requirements for his or her cooperation in removing obstacles precluding removal (Section 60a subs. 5 fourth and fifth sentence of the Residence Act). This prohibition on notification of a removal beforehand aims to prevent the respective persons from absconding and to effectively enforce return decisions. There has been some criticism of this provision, which is thought to make it more difficult to assert reasons for a suspension of removal and thus to rely on effective legal remedies (Bauer 2016: Section 59 margin no. 7). However, without issuing a notification beforehand, it also becomes more difficult to prove that a person has evaded removal. This, in turn, makes it more difficult to place the person in detention to secure removal (see Hoffmeyer-Zlotnik 2017: 37). The act was one response to an attack on a Christmas market in Berlin on 19 December 2016, when a terrorist drove a lorry into the crowd and killed twelve people and injured another 48 (see Chapter 2.2 and EMN/BAMF 2017: 21).

Judgments on removal orders

Both the Federal Administrative Court and the Federal Constitutional Court passed important judgments on the removal order pursuant to Section 58a of the Residence Act in 2017 (see also the info box). Dangerous suspects may be removed without a prior expulsion or another termination of a right to residence based on the assessment of facts, in order to avert a special danger to the security of the Federal Republic of Germany or a terrorist threat (Section 58a subs. 1 first sentence of the Residence Act). Furthermore, they need not be sentenced for a crime either, yet. However, the removal may not be enforced if a legal removal ban applies, in particular if the person faces a real risk of torture, inhuman or degrading treatment in the country of destination (see Section 58a subs. 3 first sentence of the Residence Act; Article 3 of the European Convention on Human Rights). This provision has been in place since 2005, but has been rarely used because

the obstacles are high (Mascolo/Steinke 2017). On 21 March 2017, the Federal Administrative Court refused to grant temporary relief against the removal of two persons pursuant to Section 58a of the Residence Act¹¹⁷. This was seen as a sign that the provision might be invoked more often in the future (Mascolo/Steinke 2017). On 22 August 2017, the appeal against the two removals was ultimately rejected (Bundesverwaltungsgericht 2017).¹¹⁸ On 24 July 2017, the Federal Constitutional Court decided in another case that the provisions of Section 58a of the Residence Act are compatible with the Basic Law (Bundesverfassungsgericht 2017).¹¹⁹ According to the Federal Ministry of the Interior, 80 dangerous suspects and persons with an “Islamist-extremist background” were removed, with ten of them being subject to a removal order pursuant to Section 58a of the Residence Act (BMI 2018c).

Repatriation Support Centre (Gemeinsames Zentrum zur Unterstützung der Rückkehr)

On 9 February 2017, the Chancellor and the Länder prime ministers decided on establishing the Repatriation Support Centre (ZUR). The Repatriation Support Centre started work in March 2017; it coordinates the operative efforts of the Federal and Land authorities in the areas of both voluntary and forced returns. For example, it supports the Länder in organising collective removals or procuring passport substitutes for return purposes (Deutscher Bundestag 2017q: 3). In addition, coordination in the field of voluntary returns is improved. The Repatriation Support Centre is run by the Federal Ministry of the Interior and builds upon existing structures, such as the Coordination Agency for Integrated Return Management of the Federal Government and the Länder (BLK IRM) and its Return Working Group (AG Rück) or the passport substitute procurement office of the Federal Police. The offices of the Coordination Agency and the Return Working Group now come under the remit of the Repatriation Support Centre (IMK 2017: 8).

Removals to Afghanistan

As in 2016, removals to Afghanistan were a highly controversial issue in 2017. In October 2016, both the EU and the Federal Government signed

117 BVerwG 1 VR 1.17.

118 BVerwG 1 A 2.17, BVerwG 1 A 3.17.

119 2 BvR 1487/17.

agreements with Afghanistan to facilitate both forced and voluntary returns (EMN/BAMF 2017: 63). On these grounds, eight collective removals to Afghanistan took place between December 2016 and end-2017. A total of 155 persons were removed, most of them from Bavaria, followed by Hamburg, Baden-Württemberg, North Rhine-Westphalia and Hesse¹²⁰ (Deutscher Bundestag 2017l: 4; Deutscher Bundestag 2018m: 9; Zeit Online 2017). The collective removals were funded by the European Border and Coast Guard Agency (Frontex) (Deutscher Bundestag 2018l: 11).

After an attack in Kabul, the Afghan capital, hit the building of the German embassy on 31 May 2017, the Federal Government and the Länder announced that they would review their assessment of the security situation in Afghanistan and largely suspend removals until they had done so and work at the embassy was back to normal (Bundesregierung 2017c). Asylum application decisions were also temporarily suspended (Zeit Online 2017). The review was concluded in August 2017 and came to the result that the security situation for civilians had not changed significantly (BMI 2017o; see critically also PRO ASYL 2017). Collective removals were resumed in September, but according to the Federal Government, “apart from voluntary returns, only criminals, dangerous suspects and persons who stubbornly refused to cooperate towards establishing their identity were removed to Afghanistan until the embassy at Kabul was completely back to normal” (Deutscher Bundestag 2018m: 2 et seq.). According to the Federal Government, the security situation in the country is “volatile and differs considerably between the regions” (Deutscher Bundestag 2018m: 2).

The parliamentary groups of Alliance 90/The Greens and The Left, Amnesty International Germany and other civil-society organisations criticise removals to Afghanistan, as they believe security in the country is insufficient (Bundestagsfraktion Bündnis 90/DIE GRÜNEN 2017; Fraktion DIE LINKE im Bundestag 2018; Klöckner 2017; Amnesty International 2017). Moreover, they claim that the threat of removal is a major psychological burden which caused more people who are obliged to leave the country to abscond (Mediendienst Integration 2017). On 14 February 2017, Schleswig-Holstein ordered a three-month ban on removals to Afghanistan (Ministerium für Inneres und Bundesangelegenheiten 2017).

¹²⁰ For one collective removal (24 April 2017) no breakdown by Länder is available.

New detention facility for detention to secure removal

On 20 December 2017, Hans-Joachim Grote, minister of the interior of Schleswig-Holstein, announced that a new, special detention facility for detention to secure removal was to be built at Glückstadt. The facility will be used jointly by Schleswig-Holstein, Hamburg and Mecklenburg-Vorpommern (Ministerium für Inneres, Ländliche Räume und Integration 2017b). The bill on legal provisions concerning detention to secure removal is to be presented to the Land parliament during the first half of 2018. The facility will have a total of 60 places, with each of the Länder being entitled to 20 of them (Ministerium für Inneres, Ländliche Räume und Integration 2017c).

Land refugee commissioner Stefan Schmidt criticised the plans and said that voluntary return should be the preferred option to terminate residence (Schleswig-Holsteinischer Landtag 2017). The minister of the interior of Schleswig-Holstein emphasised that the potential detainees were not criminals. The detention facility was aimed at “accommodation minus free movement”. The detainees were to be given “as much freedom to move as possible”, and the accommodation conditions were to be considerably different from those for criminals (Ministerium für Inneres, Ländliche Räume und Integration 2017c). However, it was necessary to expand the number of places for detention to secure removal because persons who are obliged to leave the country might abscond otherwise (Ministerium für Inneres, Ländliche Räume und Integration 2017c).

8.3 Developments referring to the EU

Action plan and recommendation of the European Commission

On 2 March 2017 the European Commission released its renewed Action Plan on return. It is based on an Action Plan adopted in 2015, which contained “concrete actions to improve the efficiency of the European Union’s return system” (KOM 2017h: 2). Despite the implementation of most of these actions, “the overall impact on the return track record across the European Union remained limited”, which is why the Commission thought a renewed

Action Plan was necessary (KOM 2017h: 2). At the same time the European Commission published a recommendation to the Member States on “making returns more effective when implementing the Directive 2008/115/EC of the European Parliament and of the Council” (KOM 2017i: 1). It recommends to the Member States to use the leeway granted by the Return Directive in such a way that only minimum standards are guaranteed in key areas. This applies, for example, to the deadline for voluntary departure, which should be as short as possible according to the Commission, and the use of detention to secure removal, which should be ordered for the maximum length allowed under the Directive (see Hoffmeyer-Zlotnik 2017 for an overview).

The Commission Recommendation has been criticised by civil-society organisations in particular. On 3 March 2017, 90 non-governmental organisations published a joint opinion which said that the Commission’s interpretation of the Return Directive ate away at human-rights standards during the return procedure and motivated the Member States to reduce their standards. The recommendations concerning detention to secure removal met with particular criticism (ECRE 2017).

of them were resettled in other countries (such as France) (Deutscher Bundestag 2018n: 4).

European Border and Coast Guard Agency (Frontex)

In 2017, 1,192 German police officers from both the Federal and the Land police forces participated in 58 Frontex-coordinated return measures. Albania, Georgia, Kosovo, Nigeria and Pakistan were the most important destinations (Deutscher Bundestag 2018: 40 et seq.).

Return from Libya

Via the EU Trust Fund for Africa, the EU supports voluntary returns of migrants from Libya to their countries of origin. The programme is run by IOM. In 2017, 19,370 persons returned from Libya to their countries of origin under the programme (Deutscher Bundestag 2018i). The programme was accelerated by international organisations gaining access to detention centres for refugees in Libya. According to the Federal Foreign Office, the issuance of documents has been accelerated as well (Deutscher Bundestag 2018i). “Under the Emergency Transit Mechanism (ETM), the UNHCR has additionally evacuated 1,084 refugees from Libya by 15 February 2018” and brought to Niger, from where some

9 Human trafficking

9.1 Background and general context

The EU Directive on preventing and combating trafficking in human beings and protecting its victims¹²¹ was implemented by the Act on Improving Measures to Combat Human Trafficking¹²², which entered into force on 15 October 2016. This Act entailed sweeping amendments to the criminal law provisions on human trafficking. The definition of the crime as set out in Section 232 of the German Criminal Code is similar to the international definition of human trafficking; the recruitment, transport, referral, harbouring or sheltering of persons who are to be exploited is punishable by law. In addition, the victims must be either in an economic or personal predicament or below 21 years of age or helpless because they are in a foreign country (Section 232 of the German Criminal Code). The German Criminal Code differentiates between different types of exploitation, namely forced prostitution (Section 232a of the Criminal Code), forced labour (Section 232 of the Criminal Code), labour exploitation (Section 233 of the Criminal Code) or exploitation for the purpose of begging, for the purpose of committing criminal offences or for the purpose of organ trafficking (Section 232 subs. 1 first sentence letters c and d and third sentence of the Criminal Code).

The Federal Office has employed specially commissioned case officers during the asylum procedure for victims of human trafficking at its branch offices since 1996. The special case officers are involved in the decision on the asylum application (BAMF 2016d). Some rules of the asylum procedure may be waived for victims of human trafficking, for example the automatic redistribution or a transfer under the Dublin procedure, and the victims may be housed in particularly protected apartments (BAMF 2016e).

Moreover, foreign victims of human trafficking may be granted a residence permit pursuant to the humanitarian special regulation of Section 25 subs. 4a of the Residence Act, even if they are enforceably required to leave the Federal territory, provided that the stay of the foreigners is considered to be appropriate in connection with criminal proceedings, that the foreigners have broken off contact to the persons accused of having committed the criminal offence and that the foreigners have declared their willingness to testify as a witness in the criminal proceedings relating to the offence. Such a residence permit is initially granted for one year and may be extended on humanitarian or personal grounds once the criminal proceedings are over (Section 25 subs. 4a third sentence of the Residence Act). In addition, Section 59 subs. 7 grants victims of human trafficking at least a three-month period for reflection and recovery, during which no residence-related actions are taken, regardless of whether or not they actually testify in court later on (see Diakonie Deutschland 2015: 38).

The ‘Federal government and Länder working group on human trafficking’ co-ordinates the fight against trafficking in women in particular (BMFSFJ 2016a). It consists of representatives of the relevant Federal ministries, the Federal Criminal Police Office, the Federal Office for Migration and Refugees, Länder representatives and non-governmental organisations. The tasks of the working group include an “analysis of the specific issues in combating human trafficking” and “the preparation of recommendations and, if necessary, joint activities to combat human trafficking” (BMFSFJ 2016a). During the existence of the working group, the Federal Criminal Police Office has conducted trainings for police officers, a co-operation concept for witnesses who are not part of a witness protection programme was developed, and a “working paper on standardising training concerning human trafficking for the purpose of sexual exploitation” was drawn up (BMFSFJ 2016a).

In order to better coordinate the fight against human trafficking for the purpose of labour exploitation the ‘Federal government and Länder working group on combating human trafficking for the purpose of labour exploitation’ was established in

¹²¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

¹²² BGBl. 2016 Part I No. 48 p. 2226.

February 2015 and put under the supervision of the Federal Ministry of Labour and Social Affairs. The working group aims to improve the cooperation between the Federal Government and the Länder as well as between ministries, international organisations, trade unions and civil-society players (BMAS 2016b).

In addition, specialist counselling centres to victims play an important role. Victims of human trafficking often do not file a complaint unless they are accompanied by counsellors from a specialist counselling centre. In 2016, 34% of all victims of human trafficking for the purpose of sexual exploitation in completed investigations (166 persons) received counselling from specialist counselling centres (BKA 2017a: 13).

Under the Victims Compensation Act, victims of violence receive the same benefits as victims of war, independently of any other welfare benefits. The Federal Ministry of Labour and Social Affairs regularly updates and publishes a brochure titled 'Assistance for Victims of Violence' as a handout for police officers and special victim support services so that, for instance, victims of human trafficking can quickly and clearly be informed about any compensation that is available (BMAS 2016c).

The Federal Office for Family and Civil Society Functions (Bundesamt für Familie und zivilgesellschaftliche Aufgaben, BAFzA) has been operating the 'Violence against Women' helpline since March 2013. The helpline operates round the clock, 24 hours a day and 365 days a year. Victims and their friends or relatives can call the number 08000 116 016 to receive free and, if desired, anonymous advice on all forms of violence against women. It is also available to female migrants who suffered violence during the flight or in shelters. The helpline provides information and advice in 17 languages¹²³ and a sign language service for the deaf and hearing impaired in order to deal with the specific situation of female refugees or female migrants (BMFSFJ 2016b, 2017e). The helpline also supports employees of reception centres if they are confronted with violence against women in the course of their work (BMFSFJ 2015). Counselling is also provided via e-mail or a chat service (BMFSFJ 2016b).

¹²³ Arab, Bulgarian, Chinese, English, French, Italian, Kurdish, Farsi, Polish, Portuguese, Romanian, Russian, Serb/Serb-Croatian, Spanish, Turkish, Vietnamese.

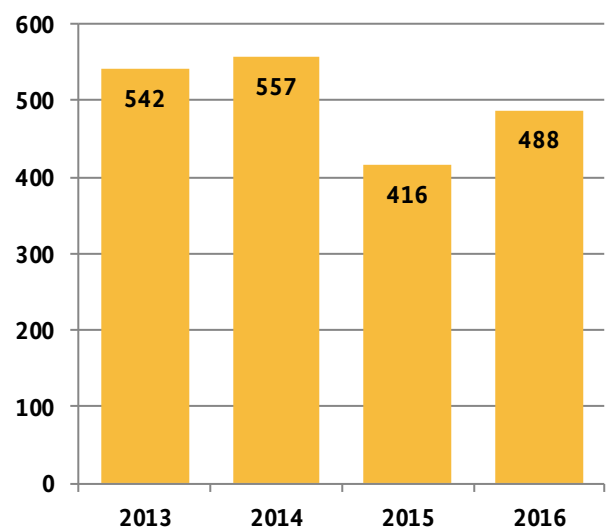
9.2 National developments

Statistics

According to the National Situation Report of the Federal Criminal Police office, 363 investigations were closed in 2016¹²⁴, registering a total of 524 suspects of human trafficking for the purpose of sexual exploitation. Compared to the preceding year, the number of suspects declined by 9%. As in the preceding years, German nationals were the biggest group of suspects (28%), followed by Romanian and Bulgarian nationals (BKA 2017a: 6).

The number of officially reported victims of human trafficking for the purpose of sexual exploitation came to 488 in 2016; however, this covers only victims registered in completed investigations. This is a significant increase from the preceding year; in the year before, a decline had been registered (BKA 2017a: 8).

Figure 9: Number of victims of human trafficking for the purpose of sexual exploitation (2013 - 2016)



Source: BKA 2017a

German nationals were the largest group of victims in 2016 (26%; 2015: 23.6%). The large share of Germans among registered victims is due to the fact that German nationals tend to know their rights

¹²⁴ The National Situation Report on Human Trafficking, which is prepared by the Federal Criminal Police, is usually published in autumn of the subsequent year, which is why no data for 2017 were available at the time of writing of this report.

better, have more trust in criminal prosecution authorities and are often better integrated into society (BKA 2017a: 8). The second largest group of victims of human trafficking for the purpose of sexual exploitation were Bulgarians (19%), followed by Romanians (16%). As in the preceding years, Nigerians were the largest group of non-European victims. After having dropped to ten in 2015 (2014: 18), the number of victims rose again in 2016, to 20. Overall, 36 victims of human trafficking for the purpose of sexual exploitation came from African countries (only completed investigations; BKA 2017a: 22).

As in the preceding years, most of the victims were women (95%). 214 of them (44%) were aged below 21, and 96 of these victims were minors. This means that the number of minor victims rose by 25% (BKA 2017a: 13). In the year before, the number of minor victims had already increased by almost 35% (BKA 2017a: 9). Including crimes related to the commercial sexual exploitation of minors, 145 investigations were conducted in 2016. They involved 214 victims and 186 suspects. 28% of the minor victims and 40% of the suspects were not German nationals (BKA 2017a: 13, 17).

According to the Federal Criminal Police Office, investigations are rendered particularly difficult by the wide variety of types of exploitation of minors. First, the criminal prosecution authorities need to proceed with particular caution and keep in close contact with other actors such as youth welfare offices and counselling centres; second, these types of exploitation have particular characteristics and are often based on the dependence of the victims on their exploiters, who may be close acquaintances or even relatives (BKA 2017a: 20).

In the area of human trafficking for the purpose of labour exploitation (Section 233 of the Criminal Code), 12 investigations into 27 suspects were closed in 2016 (2015: 19 investigations and 24 suspects). A total of 48 victims of human trafficking for labour exploitation were reported (2015: 54). Roughly half of them (25 persons or 25%) came from Ukraine and were found during a large-scale investigation. Polish nationals made up the second largest group (8 persons or 17%). 34 out of a total of 48 victims of human trafficking for the purpose of labour exploitation were male (BKA 2017a: 14).

However, the actual number of victims of human trafficking in Germany is likely to be considerably higher (BKA 2017a: 20). The Federal Criminal Police has pointed out that the internet, in particular social

networks and messaging services, are increasingly used for recruitment. This is particularly evident for minor victims of human trafficking for the purpose of sexual exploitation, but is playing increasingly a role for labour exploitation, too (BKA 2017a: 20).

Prostitute Protection Act

On 1 July 2017, the Prostitute Protection Act (ProstSchG)¹²⁵ entered into force. Among other things, it obliges prostitutes to have their business registered. During this registration, they will receive a confidential information and consultation talk, which will provide them with information about their legal situation, healthcare insurance, healthcare and social consultation opportunities and several other issues. In addition, prostitutes will receive healthcare advice which is tailored to their individual situation. One of the goals of the Act is to combat crime, including human trafficking and exploitation of prostitutes (Deutscher Bundestag 2016: 33). Civil society organisations doubt whether the chosen methods, such as the obligatory registration and medical check-up, are useful to recognise victims of human trafficking or whether they might not push victims of human trafficking further into illegality, particularly if they do not hold a residence title (Deutscher Bundestag 2016d: 21 et seq.). Moreover, specialist counselling centres criticise that a short talk during the registration can create neither a protected atmosphere nor the necessary trust to get prostitutes to open up. They also criticise that there is often no interpreter present so that potential victims do not have a real chance of explaining their predicament. In addition, the specialist counselling centres have voiced concerns that it might become more difficult to identify persons in a predicament if their business is registered first (FES 2018).

Protection for victims

Particularly vulnerable victims of human trafficking have access to professional support before, during and after proceedings in court. In particular, children and adolescents who are victims of serious sexual or violent crimes are entitled to free psychological and social support during the proceedings. Concerning other victims of serious violent or sexual crimes, the court shall decide in the individual

¹²⁵ Act to Regulate the Prostitution Business and Protect Prostitutes (Prostitute Protection Act, ProstSchG), BGBl. Part I no. 50, p. 2372.

case whether psychological and social support is provided during the proceedings (BMJV 2015). This option has been available since 1 January 2017 under the ‘Act strengthening the Victims of Crime in Criminal Proceedings’¹²⁶.

The Act on the Reform of Criminal Asset Recovery¹²⁷, which entered into force on 1 July 2017, also strengthens protection for victims of crime. Victims of human trafficking are no longer obliged to enforce damages against the perpetrators in court; it is sufficient if they raise and substantiate their claims (Europarat 2018: 46).

Protection for victims of human trafficking against the background of flight and asylum

The significant increase in refugee migration during the last few years has had an impact on the number of specialist counselling centres for victims of human trafficking in Germany. The statistics of these centres show that the number of victims of human trafficking has increased. Most of them come from western African countries. In most cases, the exploitation took place during the flight or in Italy, not so much in Germany or in the country of origin. In some cases, it was the reason why people decided to travel on from Italy to Germany (Europarat 2018: 6). In 2016, 20 investigations into human trafficking for the purpose of sexual exploitation were expanded to include people smuggling (BKA 2017a: 5).

Recognising human trafficking in the context of flight and asylum is a major challenge for the authorities and for NGOs alike. Several specialist counselling centres have therefore launched projects and measures directed at potential victims among the refugees (Europarat 2018: 6). For example, the Network and Coordination Office against Trafficking in Human Beings (KOK), which is funded by the Federal Government Commissioner for Migration, Refugees and Integration, has implemented a project with the title “Flight and Human Trafficking – Protection and Support for Women and Minors affected or threatened by Human Trafficking”. The project was started in 2016 and extended in 2017 and aims to develop support structures to protect female

and minor refugees who are victims of or may be at risk from human trafficking (Deutscher Bundestag 2017: 84).

In order to identify victims of human trafficking during the asylum procedure and to ensure that they are treated with the necessary sensitivity at all branch offices, the Federal Office for Migration and Refugees has trained more than 60 decision-makers to become specially-commissioned case-officers for victims of human trafficking in 2017.

The European Commission has pointed out in a communication that the significant increase in the number of asylum seekers across the EU in 2015 and 2016, which was supported by people smugglers, was exploited by criminal networks that also engage in human trafficking. The Commission has underlined that potential victims should, where possible, already be identified when they enter the EU (KOM 2016b: 16).

Since identifying and protecting victims of human trafficking and persecuting the perpetrators requires all players in this field to cooperate closely, the Network and Coordination Office against Trafficking in Human Beings and the Federal Office for Migration and Refugees organised a nationwide network meeting of special advisory centres for victims of human trafficking and specially-commissioned case-officers for victims of human trafficking of the Federal Office for Migration and Refugees on 15 November 2017.

9.3 International developments

Expert group GRETA

The Group of Experts on Action against Trafficking in Human Beings (GRETA) is responsible for regularly monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings¹²⁸ by the Parties in the signatory states. In June 2015 GRETA released its first report on the implementation of the Convention in Germany (Europarat 2015). On 15 June 2017, Germany presented its report on measures taken to comply with the recommendations of the expert group (interim report; Deutscher Bundestag 2017r). Together

¹²⁶ Act strengthening the Victims of Crime in Criminal Proceedings (Third Victims' Rights Reform Act), BGBl. 2015 Part I No. 55: 2525.

¹²⁷ Act on the Reform of Criminal Asset Recovery, BGBl. 2017 Part I No. 22: 872.

¹²⁸ Council of Europe, Convention on Action against Trafficking in Human Beings (2005), Warsaw, 16 May 2005, CETS No. 197.

with the Länder and specialist associations, the legal foundations for combatting human trafficking in Germany were improved. The omnibus act on improving measures to combat human trafficking, which entered into force on 15 October 2016, led to amendments to the Criminal Code, the Act to Combat Clandestine Employment and the Residence Act (see above and EMN/BAMF 2017: 70 et seq.).

GRETA has currently entered its second evaluation cycle and is examining the implementation of the Council of Europe Convention in Germany. In autumn 2017, GRETA sent a questionnaire to the Federal Government, which has been filled out in the meantime. The Federal Government has drafted a report on measures and developments taken to combat human trafficking since the first GRETA report from 2015 (Europarat 2018).

The Federal Government and the Länder will now have to implement the new legal provisions and use their legal options. This will lead to structural reforms at the Federal level. Both the EU Directive on preventing and combating trafficking in human beings and protecting its victims and the Council of Europe Convention on Action against Trafficking in Human Beings include provisions for the establishment of a national reporting office on human trafficking and a coordination office for all government measures in this area. This office is to evaluate any new developments in the field of human trafficking, report on them and collect statistical data (DIMR 2016a: 9).

Pursuant to a request by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, the German Institute for Human Rights developed a concept for this office already in 2016. The concept is for a reporting office with a broad and flexible mandate, which should be as independent as possible and systematically include non-governmental organisations in its work. Alongside data collection, the office should conduct its own research and regularly publish research reports. In addition, a coordination office is to be established, which should be supervised by a Federal ministry (DIMR 2016a: 4 et seq.).

The Federal Government has not yet established an official reporting office. However, the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth, the Federal Foreign Office, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Finance, the Federal Ministry of the Interior and the Federal Ministry of Justice and Consumer

Protection started a consultation procedure in 2016 which will examine not only the establishment of an independent national reporting office, but also options concerning the establishment of a mechanism to improve the coordination of all government strategies and measures to combat human trafficking. Civil society organisations and the Länder are involved via the 'Federal government and Länder working group on human trafficking'. A joint proposal is to be developed during the current legislative period (Deutscher Bundestag 2017r: 83; Europarat 2018: 7). While there is still no separate action plan on combating human trafficking, the Federal Government emphasised in its answer that the strategies are being steadily developed in the framework of a comprehensive approach to combating human trafficking (Europarat 2018: 7).

10 Migration and development

10.1 Background and general context

10.1.1 Discussion on migration and development

The interaction between migration and development is a controversial issue among researchers. Consensus only exists on that it is impossible to make general statements on the impact of migration on development. “Rather, the impact depends on the context, in particular on the socio-economic and legal framework conditions, the development contexts in the countries of destination and origin and migrants’ relationships with their country of origin” (Kraler/Noack 2017a). Likewise, there is no empirical scientific evidence about the impact of development on migration either. Researchers only agree that “not only a lack of development is conducive to migration movements, but also the perception of opportunities and chances” (Kraler/Noack 2017a). A stronger interlinkage of migration and development policies has been a topic of international discussion since the early 2000s (Kraler/Noack 2017b) and of German discussion since 2006/2007. For Germany, the frames of reference are the Sustainable Development Goals of the United Nations, which were adopted in 2015 and explicitly list migration as an element of development, and the Global Approach to Migration and Mobility (GAMM) of the EU, which has been developed steadily since 2005 and aims at maximising the positive contributions of migration and mobility to development (KOM 2018d).

Very different goals and interests may collide in the areas of migration and development policy. While migration policy predominantly focuses on managing migration flows and utilises instruments such as targeted recruitment or the promotion of returns to this end, development policy focuses on promoting structures in partner countries of development cooperation (Baraulina/Hilber/Kreienbrink 2012; Angenendt 2015).

Since 2015, refugee migration has become a more important topic of German development

cooperation (Deutscher Bundestag 2017s: 114 et seq.; Sangmeister/Wagner 2017), leading to the assertion in the 15th Development Policy Report of the Federal Government of 2017: “Mitigating the structural causes of displacement over the medium to long term is a key task of development policy” (Deutscher Bundestag 2017s: 43).¹²⁹

While the political focus is currently on refugee migration, the government sees both common ground and conceptual differences between the fields of ‘displacement and development cooperation’ and ‘migration and development cooperation’: “On the one hand, common characteristics of flight and voluntary migration movements should be addressed in order to exploit synergies, for example in the area of remittances [by migrants to their country of origin, author’s note]. On the other hand, it is necessary to differentiate between the individual development policy goals and to be clear about the instruments used: Mitigating acute causes of flight is obviously a goal of foreign and development policy, which is to be reached towards by using inter alia peace-promoting and crisis-preventing tools. In contrast, voluntary migration must be steered towards legal options and shaped in such a way that it is useful for development” (Deutscher Bundestag 2017s: 114).

Against this background, supported voluntary returns and reintegration (which are migration policy tools) were linked more closely to development cooperation instruments. While German development cooperation has been pursuing return promotion programmes for many years, these programmes were directed “mainly at migrants and refugees who were, however, qualified workers and wanted to return temporarily or permanently to their countries of origin. As refugee migration and the number of asylum application rejections have increased considerably over the last few years, new target groups have come into focus: persons obliged to leave the country and to be removed, i.e. that did not leave voluntarily” (BAMF 2017s). This supposes a major shift of perspective within development cooperation.

¹²⁹ Using development policy measures to mitigate migration pressures is a controversial issue among researchers (see Angenendt/Martin-Shields/Schraven 2017; Howden 2017).

At the same time, coping with refugee immigration within Germany itself was perceived as more of a development policy task. Certain expenses related to dealing with refugee immigration were counted towards German development policy spending, and numerous projects run by the Federal Ministry for Economic Cooperation and Development (BMZ) were directed at refugees in Germany (for example the 'Returning to New Opportunities' programme, see below). As a result, development support reached the threshold of 0.7% of gross national product (GNP) for the first time and thus met a target set by the United Nations in 1970 (BMZ 2017; OECD, n.d.).

10.1.2 Actors involved

Federal Ministry for Economic Cooperation and Development (BMZ)

The Federal Ministry for Economic Cooperation and Development (BMZ) is responsible for drafting and promoting the Federal Government's initiatives in the field of development policy.

In the field of 'migration and development cooperation' the Federal Ministry for Economic Cooperation and Development strives to reduce the risks related to migration. "The Federal Ministry for Economic Cooperation and Development is working towards national and international framework conditions for migration which take into account the needs of poorer countries. This includes, for example, provisions which make it easier for workers from development countries to legally migrate to another country" (BMZ, n.d. a). In Germany itself, the Federal Ministry for Economic Cooperation and Development raises awareness of the reasons for migration and the opportunities it entails. "The ministry thereby wants contribute to a wider acceptance of migrants. Migrants are important cooperation partners for the ministry's educational work on development policy: Migrants are part of the active civil society in both Germany and their country of origin. They can provide reliable information about their countries of origin and function as bridges builders between states" (BMZ, n.d. a).

The Federal Ministry for Economic Cooperation and Development has identified four areas of intervention in the area of 'displacement and development cooperation'. These four areas of intervention overlap in many of the fields of work and are supposed to complement each other.

- *First area of intervention – Tackling the root causes of displacement*
"Regardless of how the causes of displacement have come about, the only way they can be tackled is through long-term efforts. The aim is to improve people's living conditions to such an extent that they will not be forced to leave. This requires initiatives to strengthen political and economic stability and to improve security and social cohesion" (BMZ, n.d. b).
- *Second area of intervention – Stabilising the host regions*
"In the host countries, it is often difficult for refugees and internally displaced persons to find employment. There are only few countries that give them work permits and, thus, a chance to make a living through regular employment. In addition, they often do not have adequate access to education programmes or health services. [...] And the arrival of very large numbers of people within a short space of time is often a huge challenge for host countries: there is a lack of housing and employment opportunities and of teachers and schools; food and water start to run low. Health posts and hospitals, too, are often hopelessly overstretched. In particular, conflicts can arise between refugees and local communities over access to water and fertile land. [...] Through development projects that improve job creation, education or health care and that benefit both displaced people and locals in the host communities, it is possible to foster the integration of displaced people in their new environment and help reduce social tensions" (BMZ, n.d. c).
- *Third area of intervention – Integration and reintegration of refugees, internally displaced persons and returnees*
"Through its development cooperation, Germany seeks to give refugees and internally displaced people in host countries as well as returnees a basis for building a future for themselves in their countries of origin. Beyond meeting the immediate basic needs of refugees (food, water), Germany is helping them by providing income opportunities. Through cash-for-work activities, refugees are able to generate an income that is quickly available. The programme is also open to people from host communities" (BMZ, n.d. d).
- *Fourth area of intervention – Encouraging people to return voluntarily, with support from the Returning to New Opportunities programme*
"The German government assists people in returning home voluntarily. Through its 'Returning to New Opportunities' programme, it is creating chances for a new start for people in selected

countries. The returnee programme has been in development since March 2017 and already supports people who want to return to Albania, Kosovo, Serbia, Tunisia, Morocco, Ghana and Senegal. Other target countries of the programme are Nigeria, Iraq, Afghanistan and Egypt.” (BMZ, n.d. e; see below).

These four areas of intervention are implemented by a range of programmes for different regions, for example the Middle East, Africa and the Balkans.

Gesellschaft für Internationale Zusammenarbeit (GIZ) and Centre for International Migration and Development

The development policy initiatives of the Federal Ministry for Economic Cooperation and Development are actually implemented by implementing bodies. In the area of migration and development, these are the Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and the Centre for International Migration and Development (CIM), a joint operation of GIZ and the Federal Employment Agency. The ‘Migration for Development’ programme is particularly relevant in this respect. Since 2017, it has been organised in two modules, one for the area of ‘migration and development cooperation’ and one for the area ‘displacement and development cooperation’.

The module ‘development-oriented migration’ continues the programme’s former efforts in the area of potential-oriented migration (area ‘migration and development cooperation’):

- It supports returning experts who have studied or worked in Germany and who wish to put their knowledge to good use by working in their country of origin for a limited period of time.
- In addition, it provides support for small-scale development-oriented projects organised by diaspora organisations committed to improving the lives of people in their country of origin, as well as support for voluntary short-term assignments of diaspora experts.
- Migrants who wish to start their own business in their country of origin can receive support in the form of information and training.
- Advice on job and vocational training opportunities in migrants’ countries of origin and on options for legal migration to Germany is provided as well.

- In the framework of migration policy advice, a consulting service for governments and political institutions is offered, providing information on migration policy and support in designing and implementing migration strategies (GIZ, n.d. b).

The module ‘informed return and reintegration’ (area ‘displacement and development policy’) was introduced at the beginning of 2017 in the framework of the ‘Returning to New Opportunities’ programme and provides support to facilitate the reintegration of migrants and refugees returning from Germany to their home countries (see below, GIZ, n.d. b).

Organisations in the field of promoting return

Promoting return has long been a tool of managing migration, which, however, had not fully been connected to development cooperation. There are large-scale programmes promoting return, such as the REAG/GARP programme, which has been in place for decades, and numerous other return and reintegration programmes at the EU, Federal and Länder level that, for example, offer start-up assistance or support and training before the return of third-country nationals required to leave Germany in order to facilitate their reintegration in the country of origin (see Chapter 8).

The Federal Ministry of the Interior (BMI) and the Federal Office for Migration and Refugees (BAMF) are key organisations in the area of migration policy and the implementation of nationwide programmes promoting return. Due to the increased interaction between migration and development policies in the field of displacement, GIZ and the Federal Office have institutionally cooperated on individual return and reintegration projects since 2015 (for example with regard to the URA return and reintegration project in Kosovo; see Chapter 10.2).

10.2 National developments

At the national level, 2017 was characterised by Germany’s chairing important international migration and development policy bodies, by a new focus of German development cooperation on Africa and by the launch or enlargement of key development cooperation projects and programmes.

Germany chairing the Global Forum on Migration and Development and the G20

The Global Forum on Migration and Development (GFMD) has been in place since 2007. It is “an informal platform where government decision-makers and civil-society organisations can discuss policy measures and challenges in the migration/development context” (Kraler/Noack 2017b). In 2017 and 2018, Germany and Morocco co-chair the forum.

The main theme of the annual summit, which took place on 28 - 30 June 2017 at a ministerial level in Berlin, was “Towards a Global Social Contract on Migration and Development”. One of the goals of the forum’s work in 2017 was to make a contribution to the UN Global Compact for Safe, Orderly and Regular Migration,¹³⁰ which is to be adopted in 2018 (AA 2017d) and towards which the Federal Government has been working since 2016 (Deutscher Bundestag 2017s: 117).

In addition, Germany chaired the ‘Group of 20’ (G20) in 2017, which consists of 19 industrialised and developing countries and the European Union, i.e. 20 members in total. Ahead of the G20 summit, which took place on 7 and 8 July 2017 in Hamburg, the Federal Government identified “strengthening international institutions and structures to better counteract displacement and illegal migration” (Bundesregierung 2016) as one of the priorities of its chairmanship. In order to combat the causes of flight and displacement, it proposed an intensified cooperation with African States (Bundesregierung 2016).

The heads of state and government agreed to both goals. In their Declaration, they underlined their willingness to “address the root causes of displacement” and to “promote sustainable economic development” in the respective countries (G20 2017: 17). In addition, an ‘Africa Partnership’ was launched with the explicit goal of mitigating the causes of migration: “Our joint efforts will foster sustainable and inclusive economic growth and development, in response to the needs and aspirations of African countries, contributing to create decent employment particularly for women and youth, thus helping to address poverty and inequality as root causes of migration” (G20 2017: 15).

¹³⁰ Global Compact for Safe, Orderly and Regular Migration (A/RES/71/280).

Focus on Africa

The Federal Government declared 2017 as the ‘Africa-Year’. The aim was to reshape German development cooperation with Africa in order to strengthen the responsibility of the African States themselves and establish a relationship on an equal footing between the development partners. In January 2017, Gerd Müller, the Federal Minister for Economic Cooperation and Development, to this end presented the key features of a ‘Marshall Plan with Africa’ (BMZ 2017b).

The concept emphasises the importance of migration for the relationship between Africa and Europe: “It is vital that Africa’s young people can see a future for themselves in Africa. [...] That means that 20 million new jobs will be needed each year, in both urban and rural settings. Developing the necessary economic structures and creating new employment and training opportunities will be the central challenge. Africa’s young people also need exchange with Europe. Europe must develop a strategy that allows for legal migration whilst combating irregular migration and people smuggling” (BMZ 2017c: 5). During the year, the concept was discussed at several events and on the internet. African and European partners of German development policy as well as the business community, academia, the churches and policy-makers were invited explicitly “to discuss and further develop these proposals and approaches towards a solution” (BMZ 2017b).

Programmes and measures

Several development policy measures now include migration and development aspects or regard tackling the causes of displacement as a key goal. GIZ alone implements more than 100 projects on displacement and migration worldwide (GIZ, n.d. c). Several programmes were especially at the centre of public attention in 2017 and will be described below in an exemplary manner.

Returning to New Opportunities

The programme ‘Returning to New Opportunities’, which is run by the Federal Ministry of Economic Cooperation and Development, started in March 2017. The programme, which is implemented by GIZ, is directed at persons who return to their country of origin in the framework of voluntary

return. The goal is to provide these returnees with the opportunity for a new start in their country of origin. The programme offers them information, counselling and (financial) support for their return and reintegration, both in Germany and back in the country of origin. In addition, it is supposed to support the creation of “a perspective for local non-migrants” (Deutscher Bundestag 2018o: 13).

In Germany, several online information portals (www.returningfromgermany.de or www.build-your-future.net) and the return hotline of the Federal Office for Migration and Refugees are the main tools. They refer people to the respective return counselling centres. In addition, so-called reintegration scouts are employed in local agencies, social welfare institutions and NGOs, enabling contact between return advisors in Germany and development policy projects in the countries of origin. “Among other things, they provide information about job prospects in the countries concerned, put people in touch with the migration advice centres and other points of contact in their countries of origin, inform about existing and planned support for start-ups and explore funding options available for in-country projects that are operated by German organisations” (BMZ 2018a).

In Germany cooperating with the respective diaspora is also sought, in order to improve the starting positions and perspectives of returnees (Deutscher Bundestag 2018o: 11).

In some countries of origin, returnees can turn to migration advice centres, which support the reintegration of returnees, inform them about local job opportunities and legal ways of migration to Germany and explain the dangers of illegal migration. By the end of 2017, such centres had been established in seven countries: Albania, Serbia, Kosovo, Tunisia, Morocco, Ghana and Senegal¹³¹, and four others were being planned (in Nigeria, Iraq, Afghanistan, and Egypt) (Deutscher Bundestag 2018o: 3).

“The main task of the migration advice centres is to be the first point of contact for jobseekers and put people into contact with suitable programmes of German development policy. These programmes will then help people find a job. Additional funding is being provided to selected

German development programmes. This makes it possible for those programmes to receive persons who have obtained advice in the migration advice centres” (Deutscher Bundestag 2018o: 5).

Beyond the offers by the migration advice centres, the economic and social integration of returnees and the participation of local residents are supposed to be fostered by measures of the German development cooperation, for example in the areas of vocational training, support for start-ups, legal/social advice and basic education for children and young people (Deutscher Bundestag 2018o: 6).

Since several centres were opened in 2017 or are still at the planning stage, the data concerning the centres’ advisory activities are not yet complete. As of 30 November 2017, advice had been provided to 25,771 jobseekers and potential migrants in the four centres in Tunisia, Albania, Serbia and Kosovo (Deutscher Bundestag 2018o: 5). 417 persons from these countries had found a job, and 13,622 non-migrants benefited from qualification and training measures. “In this way, the projects provide an added value to the perspective to stay in the country of origin” (Deutscher Bundestag 2018o: 5).

While the media criticised the programme in 2017, i.a. arguing that the target group in Germany was not addressed properly (Focus online 2017) or that there was not enough advice for returnees because the centres were not sufficiently known (Süddeutsche Zeitung 2017a), the Federal Government argued that it obviously took some time for the centres to become widely known (Deutscher Bundestag 2018o: 6).

Overall, the Federal Ministry for Economic Cooperation and Development provided EUR 150 million to GIZ for reintegration programmes for returnees in the years 2017 - 2020. This will fund the different components of the programme in Germany and the countries of origin and the extension of existing development cooperation programmes to returnees (Deutscher Bundestag 2018o: 9).

Employment offensive for the Middle East /Cash for Work

The ‘Employment offensive for the Middle East’ was launched in 2016 with EUR 200 million earmarked for creating jobs and income for refugees in Syria’s neighbouring countries. In 2017, the initiative continued with a budget of EUR 230 million. The

131 The migration advice centre was opened in January 2018 (http://www.bmz.de/de/presse/aktuelleMeldungen/2018/januar/180123_pm_004_Deutschland-und-Senegal-eroeffnen-Migrationsberatungszentrum-in-Dakar/index.jsp).

programme aims to create “cash for work” opportunities, with the wages according to local minimum wages. Participants shall be enabled to cover expenses for accommodation, healthcare and clothes. The aim is to stabilise regions who have taken in Syrian refugees, for example in Iraq, Jordan, Turkey or Syria itself: “In order to preserve local societal peace, both refugees and residents of local communities can participate in all measures” (BMZ, n.d. f).

A total of 61,000 jobs were created this way in 2016. In 2017, the focus was on education and qualification measures. The initiative helped to provide school lessons to more than 300,000 children and enable 7,000 persons to take up vocational training (BMZ 2017d). Overall, EUR 800 million were promised to Syria and its neighbouring countries in 2017 (BMZ 2017e).

URA in Kosovo

The return and reintegration project “URA” in Kosovo is a good example of the stronger cooperation between the migration and development policy areas in the last few years. URA has been in place since 2006 as a joint project by the Federation and a number of Länder (Baden-Württemberg, Berlin, Bremen, Lower Saxony, North Rhine-Westphalia, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia), run by the Federal Office for Migration and Refugees. Since 2016, the implementation of the project lies with GIZ. It is currently the largest reintegration project of a single EU Member State. It offers advice to returnees in Kosovo as well as reintegration support to this group.

The project aims to ensure a smooth reintegration of the returnees (BAMF 2017). It offers social counselling, job placement services and psychological care as well as financial emergency support (e.g. one-off bridge payments) and longer-term reintegration offers for returnees (e.g. one-off payment of training or language lesson expenses). Voluntary returnees may also be granted assistance in creating a start-up (BAMF 2017t). Overall, 2,200 persons were registered and received initial counselling and 1,688 were granted financial assistance in 2017 (2016: 5,453 registrations and initial counsellings; 1,809 cases of financial assistance).

10.3 Developments referring to the EU

New European Consensus on Development

On 7 June 2017, leading EU politicians signed the “New European Consensus on Development”. The agreement aims to align the EU’s development policies with the Agenda for Sustainable Development and the Paris Climate Agreement (BMZ 2017f; KOM 2017j). While the predecessor document of 2006 had recurrently referred to the development impact of migration (EU 2006), the current Consensus emphasises that development policy is one of several tools to tackle the root causes of displacement: “Through development policy, the EU and its Member States will address the root causes of irregular migration and will, inter alia, contribute to the sustainable integration of migrants in host countries and host communities and help ensure the successful socioeconomic integration of returning migrants in their countries of origin or transit” (EU 2017). This will include promoting investment, trade and innovation in order to boost growth and employment opportunities, including through the engagement of diaspora communities, supporting social and education systems and working with private sector partners and others “to lower the cost of remittances and promote faster, cheaper and safer transfers in both source and recipient countries, thus harnessing their potential for development” (ibid.).

European External Investment Plan

In September, the European Fund for Sustainable Development (EFSD) was adopted as the first pillar of the European external investment plan (EIP) package for third countries (KOM 2017). This Investment Plan was launched in June 2016 at the initiative of the European Council in the context of the EU migration agenda. “The EIP will have a volume of EUR 3.35 billion and [...] mobilise investment worth EUR 44 billion by 2020 by getting private investors to participate. The EIP will [...] support projects which contribute to sustainable development, for example by implementing the Agenda 2030 and the EU migration agenda, including tackling the root causes of migration, and promoting the reintegration of returned migrants into their countries of origin by private and public investment, mainly in Africa, but also in neighbouring countries of the EU. The innovative element of the plan is a guarantee of

EUR 1.5 billion to cover the risks of loans and guarantees (collateralised by a guarantee fund with a volume of EUR 0.75 billion from the EU budget and the European Development Fund) in order to support investment in weaker countries in particular (Deutscher Bundestag 2017s: 66). The Federal Ministry of Economic Cooperation and Development regards the EIP as an opportunity to quickly and massively expand the development partnership with Africa in the framework of the Marshall Plan with Africa (BMZ 2017c: 14).

Mobility partnerships

Mobility partnerships between the European Union and third countries are part of the EU's migration policy, whose guidelines were set forth in the GAMM in 2005. One focus of the GAMM lies on improving the reintegration of migrants into their countries of origin "in order to effectively promote the development of the countries of origin" (Hitz 2014: 2). Beyond linking migration and development policy, these agreements are "an important instrument for the Federal Government to prevent irregular migration and combat human trafficking, to maximise the impact of migration and mobility on development, to better organise legal migration and promote mobility and to strengthen refugee protection" (Deutscher Bundestag 2015b: 2). Mobility partnerships include negotiations about loosening visa requirements and on return agreements (KOM 2018d). So far, they have been concluded with Cape Verde (2008), Moldavia (2008), Georgia (2009), Armenia (2011), Azerbaijan (2013), Morocco (2013), Tunisia (2014), Jordan (2014) and Belarus (2016). Germany is participating in all mobility partnerships except those with Cape Verde, Azerbaijan and Belarus (KOM 2018e).

Migration partnerships

In June 2016, the European Commission presented its new Migration Partnership Framework, which aims to mobilise and focus EU action and resources in our external work on managing migration. The partnerships with countries of origin and transit aim at "saving lives at sea, increasing returns, enabling migrants and refugees to stay closer to home and, in the long term, helping third countries' development in order to address root causes of irregular migration" (KOM 2016c). The partnerships will complement existing agreements, for example the mobility partnerships. The "full range of EU policies

and EU external instruments will be brought to bear" (KOM 2016c). So far, migration compacts with Ethiopia, Mali, Niger, Nigeria, and Senegal have been signed.

One year after the introduction of the framework, i.e. in June 2017, the European Commission drew a favourable conclusion, saying that cooperation with all partner countries had been intensified considerably, not least because European migration liaison officers had been deployed. Moreover, initial measures had been taken to facilitate the return of irregular migrants. Cooperation in the area of migration management had been extended by the inclusion of several countries in north and west Africa and in Asia. The partnership with Niger was said to be of particularly high quality: "Border controls and action against trafficking in human beings have been stepped up leading to the arrest of smugglers and a significant increase in Assisted Voluntary Returns of migrants from Niger to countries of origin" (KOM 2017l).

The migration partnerships have been criticised by several policymakers and civil society organisations due to their focus on returns, an insufficient emphasis of human rights and the fact that development policy aspects come second to migration management issues (e.g. Bensch 2017; NRO 2017).

The Federal Government supports the approach of the migration partnerships and has emphasised that "regarding the concept of migration partnerships, a bundle of measures is necessary to achieve substantial progress in the framework of the migration policy agenda with important countries of transit and origin, particularly in Africa. These include measures of development policy in order to improve people's outlook for the future both in the short term and structurally, a political dialogue and measures of migration and security policy, including return agreements" (Deutscher Bundestag 2016e: 7). Together with France and Italy, Germany takes particular responsibility for the EU migration partnerships with Mali and Niger (Deutscher Bundestag 2017s: 47).

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Abbreviations

AA	Federal Foreign Office (Auswärtiges Amt)
AAH-P	Training and equipment programme for foreign police forces (Ausbildungs- und Ausstattungsprogramm für ausländische Polizeikräfte)
ABH	Foreigners authority (Ausländerbehörde)
Abs.	Sub-section
A.d.A.	Author's note
ADS	Federal Anti-Discrimination Agency (Antidiskriminierungsstelle des Bundes)
aEP	maximised naturalisation rate (ausgeschöpftes Einbürgerungspotenzial)
AEUV	Treaty on the Functioning of the European Union (Vertrag über die Arbeitsweise der Europäischen Union)
AfD	Alternative for Germany (Alternative für Deutschland)
AGG	General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz)
AG Rück	Return Working Group – sub-group of IMK (Arbeitsgruppe Rückführung; Unterarbeitsgruppe der IMK)
AKST	Anonymous health insurance card Thuringia (Anonymer Krankenschein Thüringen)
ALG	Unemployment benefits (Arbeitslosengeld)
AMIF	Asylum, Migration and Integration Fund (Asyl-, Migrations- und Integrationsfonds)
ASMK	Conference of Ministers and/or Senators for Labour and Social Affairs (Konferenz der Ministerinnen und Minister bzw. Senatorinnen und Senatoren für Arbeit und Soziales der Länder)
AsylbLG	Act on Benefits for Asylum Seekers (Asylbewerberleistungsgesetz)
AsylG	Asylum Act (Asylgesetz - formerly Asylverfahrensgesetz – AsylVfG)
AsylVfG	Asylum Procedure Act (Asylverfahrensgesetz)
AsylZBV	Ordinance on Determining Asylum Jurisdiction (Asylzuständigkeitsbestimmungsverordnung)
ATCR	Annual Tripartite Consultations on Resettlement
AufenthG	Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act) (Aufenthaltsgesetz)
AufenthV	Ordinance Governing Residence (Aufenthaltsverordnung)
AVwV	Administrative Regulation (Allgemeine Verwaltungsvorschrift)
AVwV AufenthG	General Administrative Regulation to the Residence Act (Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz)
AWO	Workers' Welfare Association (Arbeiterwohlfahrt)
AZR	Central Register of Foreigners (Ausländerzentralregister)
AZRG	Act on the Central Register of Foreigners (Gesetz über das Ausländerzentralregister)
BA	Federal Labour Office (Bundesagentur für Arbeit)
BAFzA	Federal Office for Family and Civil Society Functions (Bundesamt für Familie und zivilgesellschaftliche Aufgaben)

BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BayIntG	Bavarian Integration Act (Bayrisches Integrationsgesetz)
BayRS	Bavarian archive of law (Bayerische Rechtssammlung)
BeschV	Employment Regulation (Beschäftigungsverordnung)
BFM	Commissioner for refugee management (Beauftragte(r) für Flüchtlingsmanagement)
BGBI	Federal Law Gazette (Bundesgesetzblatt)
BIBB	Federal Institute for Vocational Education and Training (Bundesinstitut für Berufsbildung)
GDP	GDP
BKA	Federal Criminal Police Office (Bundeskriminalamt)
BLK IRM	Coordination Agency for 'Integrated Return Management' of the Federal Government and the Länder (Bund-Länder-Koordinierungsstelle zum Integrierten Rückkehrmanagement)
BMAS	Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales)
BMBF	Federal Ministry for Education and Research (Bundesministerium für Bildung und Forschung)
BMEL	Federal Ministry of Food and Agriculture (Bundesministerium für Ernährung und Landwirtschaft)
BMF	Federal Ministry of Finance
BMFSFJ	Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend)
BMI	Federal Ministry of the Interior, Building and Community (Bundesministerium des Innern, für Bau und Heimat)
BMJV	Federal Ministry of Justice and Consumer Protection (Bundesministerium der Justiz und für Verbraucherschutz)
BMWi	Federal Ministry of Economics and Technology (Bundesministerium für Wirtschaft und Technologie)
BMZ	Federal Ministry for Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung)
BNE	Gross national income
BPB	Federal Agency for Civic Education (Bundeszentrale für politische Bildung)
BPOL	Federal Police (Bundespolizei)
BPolG	Federal Police Act (Gesetz über die Bundespolizei)
BQFG	Vocational Qualifications Assessment Law (Berufsqualifikationsfeststellungsgesetz)
bspw.	For example
BumF	Federal Association for Unaccompanied Minor Refugees (Bundesfachverband unbegleiteter minderjähriger Flüchtlinge)
BVA	Federal Office of Administration (Bundesverwaltungsamt)
BVerwG	Federal Administrative Court (Bundesverwaltungsgericht)
BVFG	Federal Expellee and Refugee Act (Bundesvertriebenen- und Flüchtlingsgesetz)
bzw.	respectively
c.	circa
CDU	Christian Democratic Union (German Political Party)

CIM	Centre for International Migration and Development (Centrum für internationale Migration und Entwicklung)
COI	Country of Origin (Herkunftsland)
CSU	Christian Social Union (German Political Party)
DAA	German Employee Academy (Deutsche Angestellten Akademie)
DAAD	German Academic Exchange Service (Deutscher Akademischer Austauschdienst)
DaZ	German as a second language (Deutsch als Zweitsprache)
DDR	German Democratic Republic (Deutsche Demokratische Republik)
DeuFöV	Ordinance on Job-Related Language Training (Verordnung zur berufsbezogenen Deutschsprachförderung)
DFIR	Franco-German Integration Council (Deutsch-Französischer Integrationsrat)
DGB	German Trade Union Confederation (Deutscher Gewerkschaftsbund)
d.h.	i.e.
DIK	German Islam Conference (Deutsche Islam Konferenz)
DIMR	German Institute for Human Rights (Deutsches Institut für Menschenrechte)
DJI	German Youth Institute (Deutsches Jugendinstitut)
DVB	Document and visa experts
DZHW	German Centre for Higher Education Research and Science Studies (Deutsches Zentrum für Hochschul- und Wissenschaftsforschung)
EASO	European Asylum Support Office (Europäisches Unterstützungsbüro für Asylfragen)
Ebd.	Ibid.
ECRE	European Council on Refugees and Exiles
EES	Entry/exit system
EFSD	European Fund for Sustainable Development (Europäischer Fonds für Nachhaltige Entwicklung)
EG	European Community (Europäische Gemeinschaft)
EGBGB	Introductory Act to the Civil Code (Einführungsgesetz zum Bürgerlichen Gesetzbuch)
EinbTestV	Ordinance on Naturalisation Tests (Einbürgerungstestverordnung)
EIP	External Investment Plan (EU-Investitionsoffensive für Drittländer)
EMN	European Migration Network
EMRK	European Convention on Human Rights (Europäische Menschenrechtskonvention)
EPS	Early Warning and Prevention System
ERIN	European Integration Network
ESF	European Social Fund (Europäischer Sozialfonds)
etc.	Et cetera
ETM	Emergency Transit Mechanism
EU	European Union
EuGH	European Court of Justice (Europäischer Gerichtshof)
EURINT	European Integrated Return Management
EURODAC	European Dactyloscopy (European fingerprint database)

Europol	European Police Office
EUROSUR	European border surveillance system (Europäisches Grenzüberwachungssystem)
EEA	European Economic Area
EZ	Development cooperation (Entwicklungszusammenarbeit)
f.	following
FAP	Family aid programme
FAZ	Frankfurter Allgemeine Zeitung (German newspaper)
FDP	Free Democratic Party (Freie Demokratische Partei)
FES	Friedrich-Ebert-Stiftung
ff.	following
FIM	Measures to integrate refugees (Flüchtlingsintegrationsmaßnahmen)
FreizügG	Act on the General Freedom of Movement (Freizügigkeitsgesetz)
FRG	Foreign Pensions Act (Fremdrentengesetz)
FRONTEX	European Border and Coast Guard Agency
G20	Group of 20
GAMM	Global Approach to Migration and Mobility/Global Approach to Migration Topics
GASIM	Joint Analysis and Strategy Centre for Illegal Immigration (Gemeinsames Analyse- und Strategiezentrum illegale Migration)
GDISC	General Directors' Immigration Services Conference
GEAS	Common European Asylum System (CEAS)
GER	Common European Framework of Reference for Languages (CEFR)
GFK	Geneva Convention
GFMD	Global Forum on Migration and Development (Globales Forum für Migration und Entwicklung)
GG	Basic Law (Grundgesetz für die Bundesrepublik Deutschland)
Ggf.	if
GGUA	Gemeinnützige Gesellschaft zur Unterstützung Asylsuchender e.V.
GIZ	German Society for International Cooperation (Gesellschaft für Internationale Zusammenarbeit)
GRETA	Group of Experts on Action against Trafficking in Human Beings
GVB	Border police liaison officers (grenzpolizeiliche Verbindungsbeamtinnen und -beamten)
GVBl	Land law gazette (Gesetz- und Verordnungsblatt)
HAP	Humanitarian admission programmes (Humanitäre Aufnahmeprogramme)
HMdIS	Ministry of the Interior and Sport of Hesse (Hessisches Ministerium des Innern und für Sport)
IAB	Institute for Employment Research (Institut für Arbeitsmarkt- und Berufsforschung)
ICT-RL	EU Directive on Intra-Corporate Transfers (Directive 2014/66/EU)
IMK	Permanent Conference of Ministers and Senators for the Interior of the Länder (Ständige Konferenz der Innenminister und -senatoren der Länder)
Inkl.	including

IntMK	Conference of Ministers and Senators responsible for Integration in the Länder (Konferenz der für Integration zuständigen Ministerinnen und Minister, Senatorinnen und Senatoren der Länder)
IntV	Integration Course Ordinance (Integrationskursverordnung)
IOM	International Organisation for Migration
IPPNW	International Physicians for the Prevention of Nuclear War (Internationale Ärzte für die Verhütung des Atomkrieges)
IQ	Programme "Integration through Qualification (IQ)" (Förderprogramm „Integration durch Qualifizierung“)
i. V. m.	in conjunction with
JHA Council	Justice and Home Affairs Council
JMD	Youth migration services (Jugendmigrationsdienste)
KdU	Costs for accommodation and heating
KJSG	Act to strengthen children and adolescents (Kinder- und Jugendstärkungsgesetz)
KOK	Network against Trafficking in Human Beings (Bundesweiter Koordinationskreis gegen Menschenhandel e.V.)
KOM	European Commission (Europäische Kommission)
LpB	Land Agency for Civic Education (Landeszentrale für politische Bildung)
LSBTI	German acronym for "lesbian, gay, bisexual, transsexual, intersexual".
LSBTIQ	German acronym for "lesbian, gay, bisexual, transsexual, transgender, intersexual, queer".
LSVD	Lesben- und Schwulenverband Deutschland (German organisation of lesbians and gays)
MBE	Migration Advisory Service for Adult Immigrants (Migrationsberatung für erwachsene Zuwanderer)
MFFJIV RLP	Ministry for Family Affairs, Women, Youth, Integration and Consumer Protection of Rhineland-Palatinate (Ministerium für Familie, Frauen, Jugend, Integration und Verbraucherschutz Rheinland-Pfalz)
MI Nieder-sachsen	Ministry of the interior and sports of Lower Saxony (Niedersächsisches Ministerium für Inneres und Sport)
MIBS Saarland	Ministry of the interior, construction and sports of Saarland (Saarländisches Ministerium für Inneres, Bauen und Sport)
m	million
MKFFI	Ministry for Children, Family Affairs, Refugees and Integration (North Rhine-Westphalia) (Ministerium für Kinder, Familie, Flüchtlinge und Integration (Nordrhein-Westfalen))
MS Nieder-sachsen	Ministry of Social Affairs, Health and Equality of Lower Saxony (Niedersächsisches Ministerium für Soziales, Gesundheit und Gleichstellung)
MWK	Ministry of Science, Research and Arts (Baden-Württemberg) (Ministerium für Wissenschaft, Forschung und Kunst (Baden-Württemberg))
m. W. v.	Effective as of
NAP	National Action Plan against Racism (Nationaler Aktionsplan gegen Rassismus)
NetzDG	Network Enforcement Act (Netzwerkdurchsetzungsgesetz)
NGO	Non-governmental organization (Nichtregierungsorganisation)
Nr.	Number

NSU	Nationalsozialistischer Untergrund ("National-Socialist Underground", a German terrorist group)
OECD	Organisation for Economic Cooperation and Development (Organisation für wirtschaftliche Zusammenarbeit und Entwicklung)
OEG	Victims Compensation Act (Opferentschädigungsgesetz)
o. J.	Not dated
OVG	Higher Administrative Court (Oberverwaltungsgericht)
PAG	Act on Police Tasks (Polizeiaufgabengesetz)
PMK	Politically motivated crime (politisch motivierte Kriminalität)
PNR	Passenger Name Record
p. P.	Per person
ProstSchG	Prostitute Protection Act (Prostituiertenschutzgesetz)
PTU	Physical and technical examination
RBSFV	Regulation on determining the percentage for the extrapolation of the regular needs categories (Regelbedarfsstufen-Fortschreibungsverordnung)
rd.	roughly
REAG/ GARP	Reintegration and Emigration Programme for Asylum-Seekers in Germany/ Government Assisted Repatriation Programme
REG	Return Expert Group
REST Directive	Directive (EU) 2016/801 of the European Parliament and the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing
RL	Directive (Richtlinie)
SchlHWahlG	Land electoral law of Schleswig-Holstein (Schleswig-Holsteinisches Landeswahlgesetz)
SGB	Social Code (Sozialgesetzbuch)
SIS	Schengen Information System
SMS	Ministry of Social Affairs and Consumer Protection of Saxony (Sächsisches Staatsministerium für Soziales und Verbraucherschutz)
SPD	Social Democratic Party (Sozialdemokratische Partei Deutschlands)
SSW	Südschleswigscher Wählerverband (German party)
StAG	Nationality Act (Staatsangehörigkeitsgesetz)
StBA	Federal Statistical Office (Statistisches Bundesamt)
StGB	Criminal Code (Strafgesetzbuch)
SVR	Expert Council of German Foundations on Integration and Migration (Sachverständigenrat deutscher Stiftungen für Integration und Migration, SVR)
UAM	Unaccompanied foreign minors (Unbegleitete ausländische Minderjährige)
UE	Lessons
UM	Unaccompanied minor (Unbegleitete Minderjährige)
UMA	Unaccompanied minor foreigners (unbegleitete minderjährige Ausländer)
umF	Unaccompanied minor refugees (unbegleitete minderjährige Flüchtlinge)
UNHCR	United Nations High Commissioner for Refugees

UNICEF	United Nations International Children's Emergency Fund
VG	Administrative Court (Verwaltungsgericht)
VGH	Higher Administrative Court
Vgl.	see also
VIS	VISA information system
UN	United Nations
VO	Regulation (Verordnung); Ordinance (Verordnung)
FTE	Full-time equivalent
WJD	Wirtschaftsjunioren Deutschland (association of young entrepreneurs and managers)
WS	Winter semester
z. B.	for example
z. T.	partially
ZUR	Repatriation Support Centre (Gemeinsames Zentrum zur Unterstützung der Rückkehr)

Tables

Table 1:	First-time asylum applications and main countries of origin (2016 and 2017)	42
Table 2:	Admissions under the relocation procedure (2015 - 2017)	56
Table 3:	Admissions under the EU resettlement programme (2015 - 2017)	56
Table 4:	Admissions on humanitarian grounds from Turkey in the framework of the EU-Turkey Agreement (2015 - 2017)	56
Table 5:	Unaccompanied minors taken into care and asylum applications by unaccompanied minors (2013 - 2017)	59
Table 6:	Persons who are obliged to leave and persons whose removal has been suspended on 31 December of each year (2012 - 2017)	78
Table 7:	Number of enforced removals, removals following unauthorised entry and refusals of entry (2012 - 2017)	91

Figures

Figure 1:	Naturalisations in Germany (2000 - 2017)	36
Figure 2:	Four forms of protection	41
Figure 3:	Active facilities of the Federal Office for Migration and Refugees as of 31 December 2017	50
Figure 4:	Admissions to Germany in the framework of the EU resettlement programme, by most recent country of residence (2016 - 2017)	55
Figure 5:	Unaccompanied minors, first-time applicants (in persons) (2013 - 2017)	59
Figure 6:	REAG/GARP returns and removals (2012 - 2017)	89
Figure 7:	Top ten nationalities among recipients of REAG/GARP support (2017)	90
Figure 8:	Development of enforced removals, removals following unauthorised entry and refusals of entry (2012 - 2017)	92
Figure 9:	Number of victims of human trafficking for the purpose of sexual exploitation (2013 - 2016)	97

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